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# CASES OF CONSCIENCE

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VOL. II

# CASES OF CONSCIENCE

FOR

## ENGLISH-SPEAKING COUNTRIES

SOLVED BY

REV. THOMAS SLATER, S.J.

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# DUTIES OF PARTICULAR STATES

## Part I

### Duties of Laymen

### A JUDGE'S DUTY

Titius bonus Catholicus recenter mortuus in testamento centum libras ad Missas celebrandas pro anima sua expendendas reliquerat, quod legatum Caius executor juxta voluntatem defuncti solvere intendebat. Obstabat tamen Julius Catholicus et legatarius residuorum bonorum Titii, qui causam Marco judici etiam Catholico deferebat. Marcus vero juxta leges Anglicas legatum centum librarum irritum utpote usibus superstitiosis assignatum declaravit, unde tota summa residuo Julii accrevit. Philippus tandem sacerdos cui incumbebat cura spiritualis omnium de quibus mentio est facta rogat de eorum obligationibus transgressis vel adhuc forte implendis. Unde quæritur:

1. Quid sit testamentum ad pias causas, et quid requiratur ad ejus validitatem?

2. Num judex Catholicus ferre sententiam possit juxta leges patriæ injustas?

3. Quid ad casum?

#### Solution

1. What is a will in favor of pious causes and what is required for its validity?

Pious causes, or objects, are such as belong to the service of God and religion. Alms left for the support of religion or for charitable purposes, if the main object was the honor of God, are considered as left for pious causes. Such pious causes are subject to the legislation of the Church, which lays down that no special formalities are required for the validity of wills and legacies to pious objects; all that is requisite is that there should be moral certainty resting on the evidence of two or more witnesses about the intention of the testator.[1]

2. May a Catholic judge give sentence according to an unjust law?

If the law commands what is contrary to the law of God, no Catholic judge may pass sentence according to it. If the unjust law only affects the liberty of the subject or property rights, many theologians hold that a Catholic judge, like any other, may pass sentence according to such a law. His refusal to do so would not ordinarily benefit the accused, and the only effect would be to compel the judge to resign his office, and make it impossible for Catholics to hold such offices. Hence the accused may reasonably be presumed to submit to the action of the judge as long as the unjust law remains in force.[2]

3. The case. The legacy was void according to English law. Julius, however, was not justified in invoking the law to get the legacy declared void. He is a Catholic and is bound by the law of the Church, and for him, subjectively as well as objectively, the legacy is valid. Mark could not help doing as he did and so he may be excused. Philip, the parish priest, should admonish

[1] Ballerini-Palmieri, Opus Morale, tract. viii, pt. iii, c. iii, n. 703.

[2] Manual of Moral Theology, vol. i, p. 587.

Julius, if the admonition will do any good, and tell him that he is bound in conscience to pay over the £100 for Masses to be said for the soul of the testator according to the testator's intention. It is a case where he can not have the benefit of the law.[1]

[1] Manual of Moral Theology, vol. i, p. 506.

## 2

## A SOLITARY WITNESS

Lucia ancilla Caiæ hanc sciebat adulterium commisisse. Quum vero in diem futurum citaretur ad testimonium dandum de adulterio commisso in causa divortii contra Caiam a marito intentata dubitabat utrum crimen dominæ revelare posset ac deberet, quum ipsa sola præter ipsas partes illud sciret. Hinc confessarium adiit qui quatenus ex lege divina, civili, et ecclesiastica, duo testes requirantur ad crimen probandum, et unicus testis a judice non legitime de crimine quod ipse solus cognoscat interrogetur, respondit Luciam non debere crimen manifestare. Quod quum Titius alius sacerdos audiret, confessarium contra justitiam peccasse judicabat, quum maritum a bono, nempe divortio, ad quod jus haberet responso suo impediisset. Unde quæritur:

1. Quænam sint testium obligationes, et unde oriantur?

2. Quatenus differant præscripta juris ecclesiastici et juris Anglici de numero testium ad crimen probandum requisito, et num lex Anglica sit justa?

3. Quid ad casum?

### Solution

1. What are the duties of witnesses, and whence do they arise?

The question concerns witnesses in Courts of Justice, and in general any one may be under an obligation to give

evidence about what he knows when this is necessary to prevent great harm to others or to the State. One who is summoned by lawful authority is also bound to give evidence by the obedience which he owes to that authority. As he has sworn to tell the truth, he will be bound also by his oath to tell the truth in answer to the questions that are put to him lawfully.[1]

2. How does English law differ from canon law concerning the number of witnesses necessary to prove a crime, and is English law on the point just?

In canon law, as in the Mosaic and Roman law, two witnesses were necessary and sufficient to prove a crime. Except in the case of treason and one or two other crimes, one witness is held sufficient to prove a fact in English and many modern systems of law. This provision of modern law can not be called unjust, for practically always the evidence of the one witness is corroborated by other circumstantial evidence of the crime.[2]

3. The case. If the trial were about to take place in an ecclesiastical Court, in which Caia's husband wished to obtain a divorce *a toro et mensa*, Lucy would not be bound to tell what she knows, unless there were already *semiplena probatio* of Caia's guilt. To avoid needless complications in the case we will waive the question about the State's competence in marriage cases. In England it is at least competent in cases of judicial separation. If, then, Lucy were summoned in such a case she would practically be bound to tell what she knows. Nor is this substantially at variance with the provisions of canon law, for ordinarily when a witness is summoned, there is *semiplena probatio*,

[1] Manual of Moral Theology, vol. i, p. 594.

[2] Stephen's Commentaries, vol. iv, p. 357; Génicot, vol. ii, n. 17.

or infamy, or evident signs of guilt, and in those circumstances a single witness was obliged to give evidence even according to canon law. From what has been said it will be clear how far the confessors were right or wrong.

## 3

## A MARTYR OF SCIENCE

Caius medicus ut experiretur utrum febris, vulgo dicta *malaria*, revera morsibus muscæ cujusdam, vulgo *mosquito*, causetur, habitabat per æstatem in loco maxime pestifero prope Ostia Tiberina cum omnibus cautelis necessariis ad morsus dictae muscæ evitandos, de aliis contagionis causis nil sollicitus. Postea ut experimenta complerentur, in Anglia ubi malaria est fere extincta, morsibus muscarum in Italia contagione infectarum se exposuit, morbumque contraxit, gaudens tamen de causa febris detecta, de bono hominibus inde acquisito, necnon de gloria sibi procurata. Titius tamen Catholicus quum hæc omnia in ephemeridibus legisset confessarium rogabat utrum licite fuissent facta. Unde quæritur:

1. Qualis adsit obligatio vitam sanitatemque propriam conservandi?
2. Quænam sint obligationes speciales medicorum?
3. Quid ad casum?

### Solution

1. What sort of an obligation is there to preserve one's life and health?

There is a grave obligation of using ordinary means to preserve life and health and of not exposing either to serious and proximate risk without sufficient reason.

This obligation is derived from the Fifth Commandment, which forbids killing in so far as it is a negative precept, and prescribes ordinary care of life and health in so far as it is positive.

2. What are the ethical obligations of doctors?

Doctors, like other professional men, should have the knowledge requisite for the practice of their profession, and they should use at least ordinary care and diligence in that practice. They should use the safer remedies, and they are not allowed to make experiments on living human subjects with danger to life or health.[1] In desperate cases they may use remedies that are only probable if no better can be had.

3. The case. If Caius was practically certain that the bite of mosquitoes is the cause of malaria, he did not commit sin by living during the summer in the pestilential neighborhood of Ostia. He was convinced that he thereby exposed himself to no special risk. In allowing himself to be bitten in England by plague infected insects he voluntarily exposed himself to the morally certain risk of contracting the disease. The reasons given for thus acting are not sufficient to justify him in exposing himself to the certain risk of serious disease. Evil must not be done that good may come. We may not kill one man to save others. However, as malaria is not a very serious disease when the proper remedies are applied in time, Caius may be excused from grave sin, and perhaps even from venial under the circumstances. There is no harm in exposing ourselves to the danger of illness for good reasons.

[1] Manual of Moral Theology, vol. i, p. 596 f.

## Part II

### Duties of Clerics

## VOCATION TO THE PRIESTHOOD

Titius sacerdos religiosus exercitia spiritualia juvenibus sacris ordinibus initiandis tradebat. Venit ad eum Caius unus ex eisdem optimae dispositionis ac indolis qui dicebat se velle intentioni sacerdotii suscipiendi renunciare eo quod non sit certus se esse a Deo vocatum. Sibi applicat verba S. Alphonsi (vi, 802): "Illi igitur qui non vocati a Deo in sacra ministeria se intrudunt, ipsi sunt de quibus per Jeremiam inquit: *Non mittebam prophetas et ipsi currebant.* Quo quidem hominum genere ut ait Catechismus nihil infelicius ac miserius, nihil Ecclesiae calamitosius esse potest." Titius vero vellet scire quomodo sit Caius tractandus. Unde quaeritur:

1. Quid sit vocatio divina ad certum vitae statum?
2. Quomodo dignosci possit vocatio divina ad sacerdotium?
3. Quid ad casum?

### Solution

1. What is a divine vocation to a certain state of life?

A divine vocation may be defined as a purpose of Divine Providence choosing a person for a special state of life and giving him the helps that are required for it. Such a vocation is manifested in him who is called by an internal

and external fitness for the state, and by special lights of the understanding and motions of the will by which he is conscious that he could serve God and save his soul in that state.

2. How may a divine vocation to the priesthood be known?

A divine vocation to the priesthood may be known by the signs which have just been mentioned. If the person in question be fit to exercise the duties of the priesthood, if he hold out hopes that he will do so with the help of God, if he wishes to receive the priesthood so as to be able the better to serve God, help his fellow men, and save his soul, he shows the ordinary signs of a vocation from God.

3. The case. Titius should put a few questions to Caius with a view to finding out whether he is fit for the priesthood and whether there is a prospect of his being able to fulfil its duties properly. As he is a youth of excellent disposition and character and therefore fit for the priesthood, it will be well to ask him why up to the present he fostered the intention of becoming a priest. In all probability the answer will be satisfactory and will show that his intention was supernatural, resting on faith, on the desire to please God and save his soul. In that case he should be encouraged to persevere; he should be told to put his trust in God, who will never forsake those who trust in Him; he should be told that the words of St. Alphonsus are not meant for him, but for such as are unfit for the priesthood and who do not intend to fulfil its duties, but who intrude themselves into the clerical state for worldly motives.

## 2

## A DOUBTFUL VOCATION

Ad Caium sacerdotem qui exercitia spiritualia clericis quibusdam ordinandis tradebat accessit Julius subdiaconatu mox initiandus filius cujusdam nobilis natu minimus. Gravibus verbis onera sacerdotii Caius descripserat unde anxietates et dubia in animo Julii excitaverat. Nunquam enim serio de istis oneribus cogitaverat Julius, semper ab infantia fere audierat a parentibus et ab Episcopo quodam familiæ amicissimo se servitio Ecclesiæ, quæ talibus ad prælaturas ecclesiasticas gerendas indiget, vacare debere, quo fine ductus studia in collegio fecerat, et potius ut expectationi parentum et amicorum responderet quam ut propriæ inclinationi indulgeret clericus erat factus. Intendit officia status quæcumque sint cum auxilio Dei fideliter implere, sperat se posse onera portare, et ceteroquin bonis moribus est imbutus. Quæ quum Caius audisset de vocatione Julii dubitare incoepit, et utrum non deberet Julium consulere ut ad parentes et seculum rediret. Unde quæritur:

1. Quid sit vocatio divina ad sacerdotium?
2. Quænam sit obligatio divinam vocationem sequendi?
3. Num et quatenus peccet qui non vocatus sacerdos fiat?
4. Quid ad casum?

### Solution

1. This question is answered above, p. 23.
2. What obligation is there to follow a divine vocation?

A vocation to the priesthood is a great favor bestowed by God and it should be thankfully received. It is not commonly imposed by God as a precept, and so there would not be sin in neglecting to follow it except in cases where by so doing he who is called knowingly exposes his salvation to danger.

3. Is sin committed and how by becoming a priest without a vocation?

One who is unfit for the priesthood or who does not intend to live up to its obligations and yet becomes a priest sins grievously. One who is not unfit and who intends to live up to his obligations, but who becomes a priest from natural motives without a divine vocation, acts rashly, but in the judgment of many theologians he does not sin grievously. The reason is because such a one violates no grave precept, nor does he expose himself to serious danger of losing his soul or doing serious harm to others.[1]

4. The case. Julius is not unfit for the priesthood, though the motives which have led him so far are natural rather than supernatural. Caius would do well to tell him to take the opportunity of the retreat to think seriously over his position. He might teach him how to make his election of a state of life on supernatural principles. Let him think therefore on the duties and helps of the priesthood, and of its dangers as well, and then if in the presence of God he thinks that he can serve God and the Church and save his soul as a priest, and if he can purpose to do this, let him be ordained. If any doubt remains he should defer ordination for a time until his course is clear. But if he can not look at things from this supernatural point of view he had better return to his family.

[1] Ballerini-Palmieri, Opus Morale, tract. ix, c. ii, n. 6.

## 3

## CLERICAL CELIBACY

Titius minister Anglicanus ut de validitate ordinationis esset securus, ab episcopo quodam schismatico erat ordinatus ac postea uxorem duxit. Post aliquot annos ad fidem Catholicam conversus nunc inquirit num et sub quibus conditionibus sacro ministerio fungi possit, vel etiam juribus maritalibus uti; de validitate vero sacerdotii suscepti ambigi nequit. Unde quæritur:

1. Ad quid clerici in sacris lege cœlibatus teneantur?

2. Num et sub quibus conditionibus uxorato ordines sacros suscipere liceat?

3. Num turpes cogitationes essent sacrilegæ in sacerdote qui legis cœlibatus ignarus esset ordinatus?

4. Quid ad casum?

### Solution

1. To what are clerics in sacred Orders bound by the law of celibacy?

They are bound to observe perfect chastity, in thought and deed, and they are incapable of contracting a valid marriage.[1]

2. Is a married man allowed to receive sacred Orders and on what conditions?

A man who was married but whose wife is dead or lawfully divorced, when this is possible, may receive sacred

[1] Manual of Moral Theology, vol. i, p. 601.

Orders. One whose wife is still living and not lawfully divorced may not be ordained without the free and express consent of his wife, who, if she consents, must herself take a vow of chastity.[1]

3. Would bad thoughts be sacrilegious in a priest who had been ordained in ignorance of the law of celibacy?

Such a one would not be bound by vow to observe chastity, for a vow can not be taken by one who is ignorant of it. He would, however, be bound to observe chastity by ecclesiastical law. But probably law does not touch merely internal acts, and so although bad thoughts would be sins against the Ninth Commandment, probably they would not have the additional malice of sacrilege, as bad thoughts of priests ordained under normal conditions certainly have.

4. The case. Titius, an Anglican minister, to make sure of his ordination, got ordained by a schismatic bishop and afterwards married. It is supposed in the case that this ordination is certainly valid. As sacred Order is a diriment impediment of marriage,[2] it follows that the minister was not married validly. As he is not married he has no marital rights, and he must separate from his reputed wife. The greatest consideration should be shown to the lady which is possible under the circumstances. Titius was ordained by a schismatic, and he thus incurred irregularity, which prohibits him from exercising his orders. He should submit his case to the bishop, who after inquiring into all the circumstances of the case, and if necessary consulting the Holy See, will settle what is best for all concerned.

[1] Manual of Moral Theology, vol. i, p. 602.

[2] Cf. Ballerini-Palmieri, Opus Morale, vol. vi, n. 1143 nota.

## CLERICAL LIFE

Caius sacerdos Anglicus titulo patrimonii ordinatus nullum officium in dioecesi gerit. Hinc liber majorem anni partem extra Angliam itinerando transigere solet. Barbam non radit nec tonsuram gerit, et sine scrupulo extra Angliam in publicis theatris scenicis spectaculis adest quum incolæ putent eum esse ministrum Anglicanum. Rationem agendi facile defendit quum juxta canonistas lege ecclesiastica tantum sanciatur ut "Clericus neque comam neque barbam nutriat, scilicet, immoderata cultura comæ quæ morem lascivum et fœmineum redoleat ipsi interdicatur." [1] Et quamvis spectaculis publicis interesse ipsi etiam interdicatur, intelliguntur spectacula obscœna et turpia.[2] Quæ tamen audita Titius neo-sacerdos conciliare haud valet cum doctrina quam in seminario audiebat. Unde quæritur:

1. Quid præscribant leges scriptæ ecclesiasticæ circa ea quæ in casu occurrant?

2. Num consuetudo semper easdem leges eodem sensu explicuerit?

3. Quid ad casum?

### Solution

1. What does the written ecclesiastical law prescribe concerning the matters touched on in the case?

[1] Santi, Prælect. Jur. Can. iii, 1, n. 36. [2] Ibid., n. 41.

By the written common law clerics are forbidden to cultivate the beard with special care, after the manner of dandies, as Santi explains in the passage quoted. But provincial law and custom approved by authority in England goes further and prohibits the wearing of hair on the cheeks or on the chin (iv Westmon., d. xi, n. 13). The common law prescribes the clerical tonsure, but in this matter custom in England is contrary to the law, and ecclesiastical authority does not intervene.

With regard to theaters the law in England is severe; it prohibits "ecclesiastics who have received sacred Orders from being present at stage representations in public theaters or in places temporarily made use of as public theaters, under the penalty to transgressors of suspension to be incurred *ipso facto*, such as has hitherto been the rule in all parts of England with reservation to the respective Ordinaries."[1] More or less similar prohibitions exist in most provinces. The old written law was as stated by Santi.[2]

2. Has custom always interpreted these laws in the same way?

No; as is clear from what has just been said, both the law on these matters and its interpretation have varied considerably in different ages and countries. There is not uniformity with regard to them even now, so that the provincial or synodal decrees have mainly to be consulted and followed by the conscientious cleric.

3. The case. Although Caius had been ordained on his patrimony he was not at liberty to wander about as he chose. He had been ordained for the service of the

[1] Manual of Moral Theology, vol. i, p. 614.

[2] Cf. Ben. xiv, De Synodo Diœcesana, xi, c. x, n. 11.

diocese to which he belongs, and the bishop should see that he has suitable employment as long as he can work. He did wrong in growing his beard, though custom excuses him with regard to the tonsure. In going without scruple to plays in public theaters when out of England he also did wrong, for now the common law of the Church, introduced by universal provincial law, forbids clerics to go to public theaters. Out of England, however, he would not incur the suspension inflicted by English Provincial law, nor, inasmuch as he is a *peregrinus*, would he incur any penalty which the law of the place inflicts for such an offence. He might, however, be punished by the bishop of the place where he transgressed the law, inasmuch as it is a mere application of the prohibition of the common law by which clerics are forbidden to do what is not becoming in them.[1]

[1] Génicot, Casus Conscient., vol. i, p. 20; Analecta Ecclesiastica, 1910, p. 174.

## 5

## PUBLIC THEATRICALS

Caius sacerdos missionarius in Anglia ut expensas missionis solveret quibusdam juvenibus utriusque sexus persuasit ut operam celebrem circa Nativitatem Domini in aula municipali (*Town Hall*) repræsentarent. Quum populus tum orthodoxus tum heterodoxus magno numero aulam frequentarent, et magnam summam pecuniæ conferrent, altero die repræsentationis ut gratum animum tum actoribus tum populo significaret, ipse Caius cum Patricio amico sacerdote ex Hibernia operæ assistebat. Quod tamen quum Episcopus legis ecclesiasticæ sedulus defensor audiret, theologum quemdam rogavit nonne uterque in suspensionem iv Conc. Westmon. d. xi, n. 9 latam incurrisset. Unde quæritur:

1. Detur interpretatio doctrinalis legis de qua in casu.
2. Num peregrini legibus loci teneantur?
3. Quid ad casum?

### Solution

1. Give a doctrinal interpretation of the law in question.

The wording of the law is as follows: "Prohibemus districte ne ecclesiastici sacris ordinibus initiati scenicis spectaculis in publicis theatris vel in locis theatri publici usui ad tempus inservientibus, intersint, imponentes transgressoribus pœnam suspensionis ipso facto incurren-

dam hactenus ubique in Anglia vigentem cum reservatione respectivo Ordinario." Hence all ecclesiastics in sacred Orders are strictly forbidden to be present at scenic representations (stage plays?) either in public theaters or in places which are used for the time being as public theaters, and the penalty of suspension is *ipso facto* incurred by those who violate this precept, and their absolution is reserved to their respective Ordinary. Private theatricals in a place not open to the public do not come under the law. If the public are admitted with or without payment and a stage play is exhibited, the place is being used as a theater and persons in sacred Orders must not be present. Plays given by school children are excepted by custom, even if they be given in a public hall or theater.

2. Are *peregrini* bound by local laws?

Probably *peregrini* are not bound by the special laws which are in force in the place where they are staying for the time.[1]

3. The case. As far as I am aware there is no authoritative definition of what is meant by a *scenicum spectaculum*. Still there can be no reasonable doubt that an opera is comprised in the term. An opera is a scenic representation or stage play, which is perhaps as near an English equivalent of *scenicum spectaculum* as can be got. The opera was acted by youths of both sexes in the Town Hall, and the public flocked to hear it. It, therefore, came under the prohibition, and Caius violated the law in being present. The law is mentioned in all the faculties granted to priests in this country, and so we must presume that Caius knew that he was violating it. Caius, therefore, was suspended and must not exercise the duties

[1] Manual of Moral Theology, vol. i, p. 94.

of a priest until he has been absolved by his bishop, or by some one who has special faculties for the case from the bishop. Patrick is a stranger, and does not incur suspension, but he does wrong in being present at the opera and renders himself liable to punishment at the hands of the bishop.

## 6

## TRADING

Caius procurator cujusdam Ordinis religiosi scrupulos aliquos conscientiæ Julio confessario proposuit enodandos. Quum enim ad nova cœnobia ædificanda Ordo pecunia indigeret, et census gubernativi quos possidebat non essent valde fructiferi, Caius modici incrementi in eorum pretio nactus occasionem eos vendebat, ac actiones magis remunerativas alias viarum ferrearum, alias societatis cujusdam recenter institutæ ad omnia providenda (*General Stores*) emebat. Postea tamen dubitabat utrum ista religiosis licerent. Unde quæritur:

1. Quid sit negotiatio?

2. Qualem negotiationem et quibus lex ecclesiastica prohibeat?

3. Quid ad casum?

### Solution

1. What is trading?

Trading in the strict sense is buying commodities with the intention of selling them at a higher price without changing their nature. Buying commodities for use or for consumption is not trading, nor is selling the produce of one's own land or labor.

2. What sort of trading is forbidden by ecclesiastical law and to whom?

Ecclesiastics in sacred Orders and all religious are forbidden to trade in the strict sense. They are also forbidden to buy material and change it by hired labor for sale at a profit, and to buy animals and fatten them for sale on hired land, for such actions have the appearance of trading. Benedict XIV also declared that they are forbidden to trade by means of agents.

3. The case. Caius did nothing reprehensible in selling government stock at a profit when it rose in price, provided that it was not bought cheaper with the intention of selling afterwards at a profit when it should rise. Nor did he do wrong in investing part of the proceeds in railway stock which brought in a higher interest. There is more difficulty about his buying shares in the company which owned the stores. Most authors would say that this is not lawful, inasmuch as Caius thereby became a member of a trading company and traded by means of the servants of the company. However, unless he is a director of the company or otherwise takes an active part in managing its affairs, it is probable that he does not do wrong here either. Practically all that he does is to buy the right to receive a dividend on his shares if the company succeeds in business; there is no scandal, and no interference with his spiritual avocations. This is the opinion of several recent authors, quoted and followed by Génicot (II, n. 41), and others. We suppose of course that Caius has no reason to suspect that the company does business dishonestly.

## 7

## WARLIKE MISSIONARIES

Quatuor missionarii Catholici evangelium magno cum fructu populis in Africa centrali predicabant remoti ab aliis Europæis. Indigenæ vero bellum internecivum moverunt contra omnes Europæos quos sparsim inventos occidebant. Hinc reliqui in locos munitos fugerunt, et quodam die manus Europæorum ad missionarios venit ut eos in locum tutum conduceret. Ecce tamen in itinere magna copia barbarorum undequaque parvam manum est aggressa ita ut vix spes tenuis esset evadendi nisi omnes pugnarent. Hinc maximis in angustiis positi sunt missionarii, nam exempla Christiana docere videntur esse potius moriendum in talibus circumstantiis patienter et sine resistentia, ex altera tamen parte nisi pugnent non tantum ipsi sed et manus magnanima cum ipsis fere certo peribunt. Tandem accipiunt sclopeta et pugnando sicut ceteri ad locum tutum pervenerunt. Unde quaeritur:

1. Qua lege gerere arma clericis prohibeatur?
2. Numquam pœnam incurrant clerici homicidæ?
3. Quid ad casum?

### Solution

1. By what law are clerics forbidden to bear arms?

Clerics are bound by their profession to manifest in their conduct the meekness of Christ, and all that militates

against this obligation is forbidden by the natural and divine law. To bear arms like soldiers would be contrary to their profession and would give scandal, so that it is forbidden by natural and divine law. It is also expressly forbidden by positive law: " Let clerics who bear arms be excommunicated." [1]

2. Does a cleric who commits homicide incur any special penalty?

Yes, " whoever by any unjust and gravely culpable action, directly or indirectly, physically or morally, are guilty of homicide, thereby contract irregularity. Even casual homicide produces irregularity if it is the effect of grave negligence. If any one is killed in an unjust war all who fought on the other side contract irregularity, unless they were compelled to fight, or abstained from any action which could be the cause of death." [2]

3. The case. The missionaries acted wisely in taking guns and helping to defend themselves and those who had come to their rescue. They were being attacked as whites, not as preachers of the Gospel, and they would certainly have been killed unless they had defended themselves. They also had obligations of gratitude and charity towards the small band that came to rescue them. When the taking up of arms is necessary for self-defence it is not forbidden; necessity knows no law. Even a cleric may lawfully kill another in self-defence without incurring irregularity or any other penalty.

[1] Corpus Juris Can., iii, tit. 1, c. ii.

[2] Manual of Moral Theology, vol. ii, p. 438.

## 8

## DUTY OF RESIDENCE

Titius et Caius sacerdotes regulares missioni cuidam in Anglia inserviebant. Titius superior ad negotia quædam gerenda primo mane discessit usque ad horam decimam postmeridiem non reversurus. Caius etiam quamvis sciret aliquos inter parochianos ægrotare, quum neminem in periculo gravi constitutum putaret post superiorem amicos visitandi causa domum reliquit. Hora nona post meridiem reversus Caius audivit nuntium hora quarta venisse parochianum quemdam graviter ægrotare. Ad domum ægroti festinans cum dolore invenit Caius eum jam esse mortuum nec ante mortem sacramenta recepisse. Scrupulis igitur angebatur utrum esset culpæ lethalis reus necne. Unde quæritur:

1. Quid et qualis sit obligatio residentiæ quæ sacerdotibus incumbit?

2. Num curam animarum gerant tum superior tum subditi regulares qui missionibus in Anglia inserviant?

3. Qualis sit missionariorum obligatio sacramenta ministrandi et curandi infirmos?

4. Quid ad casum?

### Solution

1. What is the duty of residence which is incumbent on priests with the cure of souls?

"In order that they may be able to fulfil the duties of their charge, and be always ready to help the faithful in their spiritual needs, parish priests are bound to reside in the church house or in some place near the church. This law was enforced by the Council of Trent, and it has been further determined in particular points by provincial law. In the province of Westminster curates must give notice to the head priest if they wish to absent themselves even for a day. When there is another priest in residence, the head priest may absent himself for a few days without acquainting the bishop, provided that he has some good reason, that he takes care that it does not occur too often, and that he is not away on a Sunday or on a day of obligation. If he wants to be away on one of these days he must have the leave of the bishop or of the vicar-general in writing, except when the case is urgent, and then he must leave a suitable person as his substitute, and give notice to the Bishop or to the vicar-general as soon as possible."[1]

2. Do both the regular superior and his subjects who serve a mission in England exercise the cure of souls?

Yes, they are all presented to the bishop by their religious superior and they receive their faculties and office from the bishop. When there are several priests who have the cure of souls in one mission, whether they be seculars or regulars, one is named by the bishop as head priest; the others are his assistants, but all have the cure of souls according to the Westminster Synods. "Decernimus ceteros omnes curam quam habent animarum non nisi cum dependentia a primo illo exercere" (iv West. x, 2). "Porro ex eo quod cura animarum principaliter demandata

[1] Manual of Moral Theology, vol. i, p. 630.

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sit rectoribus missionum, nolint existimare coadjutores se a tanto onere esse immunes; ipsorum enim est cum dependentia a rectore eum adjuvare, prædicando scilicet, confessiones audiendo, pueros catechismum docendo, infirmos visitando atque eis sacramenta administrando, aliaque missionarii munera adimplendo" (iv West. xi, 6).

3. What is the obligation of missionary priests to administer the sacraments and look after the sick?

Missionary priests who have the cure of souls are bound to administer the sacraments to those under their charge whenever these ask for them reasonably. They should take special care of the sick as the Ritual admonishes them: "Parochus in primis meminisse debet, non postremas esse muneris sui partes ægrotantium curam habere. Quare cum primum noverit quempiam ex Fidelibus curæ suæ commissis ægrotare, non expectabit ut ad eum vocetur, sed ultro ad eum accedat; idque non semel tantum, sed sæpius, quatenus opus fuerit" (*De Visit. et Cura Infirm.*).

4. The case. Titius in the case was justified in leaving home for the day; explicitly or implicitly he left Caius in charge. Caius followed the example of Titius and left home for the day although he knew that there were several sick people in the parish, but he thought that none of them was in serious danger. As a matter of fact one died without the sacraments while the priest was away, and he might have had them if Caius had stayed at home as he should have done. There is no indication in the case that Caius went away on necessary business; it would appear that he went on pleasure. He can not be excused from all fault in leaving when he knew that there were several in the parish who were sick. If he had left advert-

ing to the probability of one of them dying in consequence without the sacraments, he would have sinned grievously. As this can hardly be said, we must say that he sinned at least venially, unless with full knowledge of all the circumstances he judged that no harm would result to his flock.

## 9

## DIFFERENT IDEALS OF PAROCHIAL WORK

Titius et Caius uterque missionarius in Anglia colloquuntur de muneribus sacerdotis cui incumbit cura animarum. Titius dicit spectare ad talem sacerdotem ex lege residentiæ domi manere ibique expectare parochianos qui si velint ad eum veniant. Itaque die dominica quidem laborem externum sacerdoti non defuturum ceteris diebus eum optime vacaturum sermoni quam maxima cura præparando, et studiis sacris, quin unquam domum relinquat nisi quando expresse vocetur ad infirmum vel ad aliud simile munus præstandum vel honestæ recreationis causa. E contra Caius dicit sacerdotem optimum domi adesse nonnisi ad cibum vel somnum necessarium sumendum, toto reliquo die debere visitare parochianos, quærere oves perditas, etiam quæ extra ovile sint, et die dominica loco sermonis formalis, ut dicitur, bene posse familiari colloquio dare substantiam meditationis matutinæ vel etiam aliquid ex pio aliquo auctore legere. Quum sententias ita diversas nullo modo conciliare possint mutuo consensu theologum adeunt ut juxta theologica principia et mentem Ecclesiæ rem definiat. Quærunt igitur:

1. Num et quomodo differant status parochi et missionarii apud nos?
2. Quænam sint præcipuæ obligationes talis missionarii?
3. Quid ad casum?

### Solution

1. Does the status of parish priests differ from that of missionary priests in England, and how?

Parish priests are canonically instituted to their parishes, from which they can not be removed except for canonical causes and by canonical process. They have ordinary jurisdiction in the internal forum. On the other hand our missionaries are nominated by the bishop whose delegates they are, and they can be more easily removed than can parish priests. With regard to their duties, parish priests and missionaries are on the same footing, except that parish priests are bound on Sundays and holidays of obligation to say Mass for their flocks, which missionaries are not strictly bound to do.[1]

2. What are the chief duties of a missionary priest?

He is bound to residence, to preach on Sundays and solemn feasts, to catechize, to administer the sacraments to those who reasonably ask for them, to visit his people, and to look after the sick.[2]

3. The case. Titius and Caius have different notions of the duty of a parish priest and neither of them has quite the right notion. To get at the correct notion according to the mind of the Church, we must join them both together. The parish priest, as Titius maintains, should find some time for study, he should have a fixed time for it every day as far as possible. Of course he can not make a cast-iron rule on the subject, never to be broken; but he should keep the fixed time sacred for study unless

[1] Manual of Moral Theology, vol. i, p. 626 ff. The decree *Maxima Cura*, 25 Aug., 1910, must now be consulted.

[2] Manual of Moral Theology, vol. i, p. 627.

a more urgent duty prevents it. During this time he should prepare his sermons and catechisms. On the other hand, there are other duties which the parish priest must not neglect. He must visit his flock, and especially the sick, without waiting to be called; he must seek out those who are straying from the fold, and promote the good of his people in other ways, which zeal and charity will suggest according to the wants of his mission. Caius should raise his standard of what preaching the Gospel demands, and he is altogether wrong in saying that the parish priest satisfies his obligation of preaching by reading a pious book.

## 10

## A NEGLIGENT PARISH PRIEST

Titius missionarius sacerdos qui solus curam animarum in quodam oppido Anglico gerit, aliquantulum fatigatus tres ultimos hebdomadæ dies apud mare transigere decrevit, quum nil magni momenti eum domi detinuerit. Sabbato vespere domum reversus invenit nuntium qui eum vocavit ad Patricium graviter ægrotantem. Expertus cognovit sæpe tales parochianos vocare sacerdotem præsertim sabbatis ad rixas inter conjuges aliosque componendas, unde manere domi statuit. Proximo die ante prandium urgentem nuntium ab amico honesto Patricii recepit in gravissimo periculo esse Patricium constitutum, tranquillus tamen prandium sumpsit, et postea ad ægroti domum iter est aggressus. Invenit Patricium jam esse mortuum quum tamen factum mortis scitu sit difficile, et putarit fortasse eum adhuc vivere sub conditione absolvit, et anxius domum est reversus. Ad conscientiam pacandum postea quærit:

1. Num obligationes parochorum et missionariorum nostrorum differant?

2. Qualis sit obligatio residentiæ, et quid ab ea parochos excuset?

3. Ad quid erga parochianos ægros parochus teneatur et sub qua obligatione?

4. Quid ad casum?

SOLUTION

1. This question was answered above, p. 44.

2. What is the duty of residence, and what excuses parish priests from the duty?

The first part of this question was answered above, p. 40.

The second part may be answered in the words of the "Manual of Moral Theology," (vol. i, p. 631).

"For some good reason, and the need of relaxation is sufficient, a parish priest may, by the common law, absent himself from his charge for a period of two months every year. The exigencies of modern parish duties rarely permit of so long an absence every year. Parish priests may be absent from their parishes for a longer period than the two months allowed by the common law when it is made necessary by Christian charity, urgent necessity, due obedience, and the evident advantage of Church or State. The approval of the bishop is always required in these cases."

3. What are the duties of the parish priest toward the sick, and how serious are those duties?

The principal duty of a parish priest toward a parishioner who is in danger of death is to administer to him the last rites of religion. As he is under a grave obligation to administer the sacraments to his parishioners when they ask for them reasonably, the obligation to administer them to one in danger of death when they are specially necessary is still more grave. The priest should not be satisfied with administering the sacraments, but he should repeat his visits, and strive to console and help the sick in their trials and temptations, as the Ritual directs. The Ritual also prescribes that the priest should do what

he can to assist the temporal necessities of the sick poor.[1]

4. The case. Provided that he did not absent himself too often, Titius did not do wrong in going to the seaside for a short holiday inside the week when he felt tired. He should, however, have some arrangement with a neighboring priest so that in his absence an urgent sick-call may be sent on to the nearest priest. Unless Titius had good reason to think that Patrick was one of those who send for the priest without necessity or reason, he should not have neglected to go at once. Better go without necessity many times than miss a real case once. When he got an urgent message next day from a respectable friend of Patrick saying that he was in the greatest danger, Titius should have put off his dinner and gone at once to the sick man. He can not be excused from a grave dereliction of duty in not doing so. On finding Patrick apparently dead he did well to absolve him conditionally, and he might also have administered Extreme Unction conditionally. Apparent death may precede real death for an hour or two, as modern authorities hold.

[1] Ritual, De Visit. et Cura Infirmorum.

## 11

## A PRIEST'S PROPER BISHOP

Titius vota simplicia in quadam Congregatione diœcesana emisit et sacerdos titulo Missionis est ordinatus. Post aliquod temporis spatium dimissionem e Congregatione obtinuit et benevolum receptorem invenit vicinæ diœcesis episcopum, qui in quadam Missione ei curam animarum tradidit. Quod quum audiret episcopus diœcesis in qua Congregatio erat instituta quæsivit a theologo utrum ipse Titium ad diœcesim suam revocare et opus ei injungere posset. Unde quæritur:

1. Num vi ordinationis sacerdos diœcesi particulari sit obstrictus?

2. Ad quid specialiter teneantur obligati juramento Missionis?

3. Num et quomodo sacerdos ab una in alteram diœcesim transferri valeat?

4. Quid ad casum?

### Solution

1. Is a priest attached to a particular diocese by his ordination?

Yes, the Council of Trent (XXIII, c. 16, De Ref.) prescribed that in future no one was to be ordained without being ascribed to that church or pious foundation for whose necessity and service he was accepted, and where

he was to exercise his functions, and not wander about without fixed abode. And if he abandons his post without leave of the bishop, he is to be forbidden the exercise of his sacred ministry.

2. To what are those specially obliged who are ordained on the title of the mission?

By the terms of the missionary oath they are bound to work in the diocese for which they were ordained under the direction of the bishop, and they can not enter into any Religious Order or Congregation without the leave of the Holy See.

3. Can a priest be transferred from one diocese to another, and how?

Yes, by the mutual consent of the respective bishops, for just cause, a priest may be excardinated from one diocese and incardinated in another. It should be done in writing. If a priest has been ordained on the title of the mission he requires the leave of the Holy See to pass to another diocese and he should take the missionary oath afresh. The Bishops of the Province of Westminster were empowered by a decree (S. C. de P. F., 18 Aug. 1885), by mutual consent to effect the transference of such a priest from one diocese to another without a renewal of the oath.[1]

4. The case. Titius had been ordained priest in a certain diocesan Congregation on the title of the mission. If the Congregation was restricted to a particular diocese, he was ordained for that diocese, and when he leaves his Congregation he becomes merely the subject of the bishop of that diocese, and he can not leave it without the bishop's

[1] Collectanea S. C. de P. F. n. 1641 ed. 2da. The Bishops of the United States have a similar faculty.

permission. If he does so, he can be recalled under threat of censure. If the Congregation was spread in several dioceses, Titius on leaving his Congregation became subject to the bishop of his origin, and if he wants to join another diocese he should arrange with the bishop of his origin.[1]

[1] Vermeersch, De Religiosis Institutis, vol. i, nn. 335, 484.

## Part III

## Duties of Religious

### 1

### A VOCATION TO RELIGION

Caius juvenis optimo ingenio et bonis moribus in quodam Collegio catholico educatus quum tempus a Collegio discedendi appropinquaret ad confessarium accedit et rogat quid a se sit faciendum. Timet enim ne sit vocatus ad statum religiosum, quum ab anno fere integro sæpissime cogitatio religionem ingrediendi in mentem venerit, et facile in isto statu salutem consecuturum sit ei persuasum, quod ob dispositionem vivacem et inclinationem ad voluptates satis difficile esset in seculo; attamen austeritatem vitæ religiosæ animus ejus refugit. Vult igitur scire utrum teneatur religionem ingredi. Unde quæritur:

1. Quid sit vocatio divina et unde sciatur utrum aliquis vocationem habeat?

2. Num vocatus peccet si vocationem non sequatur, vel non vocatus se ingerens in statum religiosum?

3. Quid ad casum?

#### Solution

1. This question is answered above, p. 23.

2. Does one who is called to religion sin if he does not

follow his vocation, and does he sin who enters religion without a vocation?

The answer given above with regard to vocation to the priesthood may be applied to this question. With regard to religious life which does not involve the priesthood, many divines hold with St. Thomas that a general vocation is given by God to all who are free and suited to the religious state. So that any such persons who choose to enter religion for some supernatural motive are in fact called thereto by God. As a vocation to a religious life is a call to perfection and to the practising of the counsels of the Gospel, which do not bind under sin, no sin is committed *per se* by one who does not follow such a vocation. If, however, he is conscious that by remaining in the world he would expose his salvation to serious danger he would of course commit sin by neglecting the necessary means to save his soul.[1]

3. The case. Caius, a young man of excellent disposition and good morals, is afraid that he has a vocation to the religious life. The thought of it has often been in his mind during the past year; he is persuaded that he could easily save his soul in that state of life, while he is afraid that on account of his lively disposition and inclination for pleasure he would find it difficult to do so in the world. What deters him is the austerity of religion. Caius manifests some of the ordinary signs of a religious vocation. His fear of the austerity of the life does not militate against his having a genuine vocation, and should not be reckoned when trying to come to a decision. The confessor therefore should tell Caius that a religious vocation is a great grace which God gives to those whom He specially loves,

[1] Manual of Moral Theology, vol. i, p. 642.

as He did to the young man in the Gospel. He might tell him that he has many of the signs of a religious vocation, but he should not attempt to settle the question himself; he should let Caius do that, recommending him to make a retreat for the purpose.

## 2

## IMPEDIMENTS TO ENTERING RELIGION

Caia monialis recenter vota simplicia professa Titio confessario manifestat se ante ingressum in Religionem debitum viginti librarum cum Paulo contraxisse nondum solutum, cujus mentionem nullam se fecisse superioribus. Porro dicit se quinquaginta libras secum in religionem attulisse ac Ordini dedisse ad compensandum victum et vestitum sibi durante novitiatu præstitum. Titius scit quidem æs alienum esse religionis impedimentum et justitiam esse servandam, nescit tamen quid in casu sit faciendum. Unde quæritur:

1. Quinam possint religionem ingredi?

2. Quomodo differant impedimenta ingressus in religionem substantialia et secundaria?

3. Num Ordo religiosus solvere teneatur debita personalia membrorum?

4. Quid ad casum?

### Solution

1. Who may enter Religion?

All those who have the aptitude for the duties of religious life and who are not prevented by any special obstacle may enter religion. The chief obstacles are: the necessity of supporting parents, consummated marriage, and debts. Bishops can not become Religious without the leave of

the Holy See. The different Religious Orders have special impediments in addition to these.[1]

2. How do substantial impediments differ from secondary?

The former make religious profession invalid if they are not removed beforehand, the latter only render it unlawful. Debts constitute a secondary impediment.

3. Is a Religious Order bound to pay the personal debts of its members?

Certainly not. Personal obligations of this sort only affect him who contracted them.

4. The case. Caia did wrong to enter Religion without paying her debts. She has given all the money she had to pay for her own support during the novitiate to her superiors, who know nothing about the debt. She has no money left to pay the debt now. If she obtains any afterwards by inheritance or otherwise she will be obliged to pay the debt with the customary interest. In the meantime it will be sufficient if she repents of her fault, and resolves to fulfil her obligations when she can do so.

[1] Manual of Moral Theology, vol. i, p. 643.

## 3

## OBSTACLES TO VOCATION

Patricius sacerdos secularis et in Anglia missionarius sed in Scotia oriundus consilium petit Caii regularis in his circumstantiis. Patricius paucis abhinc annis quoddam seminarium diœcesanum in Anglia intravit et post juramentum Missionis emissum tandem aliquando fuit titulo Missionis ordinatus. Postea per duos annos Missioni cuidam inserviens plurimum in vinea Domini fructum attulit. Attamen pericula talis vitæ expertus et amore perfectionis religiosæ Opatus Episcopi rogat licentiam in patriam revertendi animo ibidem monasterium quoddam intrandi. Negat Episcopus, quinimmo asserit Patricium esse jam in statu perfectionis nec rationem adesse religiosam vitam desiderandi, cujus quo facilius obliviscatur jubet ut ad aliam Missionem pauperrimam ubi nec labor nec paupertas sint defuturi se conferat. Patricius igitur a Caio petit.

1. Quæ obligationes Missioni inserviendi sibi incumbant?

2. Num verum sit statum sacerdotis secularis esse statum perfectionis?

3. Num et sub quibus conditionibus religionem ingredi valeat?

4. Num teneatur Episcopo obedire quoad aliam Missionem?

SOLUTION

1. Under what obligations does Patrick lie of serving the Mission?

Patrick is bound to serve the diocese for which he was ordained by the very fact of his ordination and by his promise of canonical obedience to the Bishop. He is also bound by the terms of the missionary oath which he has taken.[1]

2. Is it true that the state of a secular priest is a state of perfection?

A certain stability of life is necessary to constitute a state of life in the strict sense, and that it may be a state of acquiring perfection it should impose the obligation and offer special means to attain perfection. The secular priesthood is not a state of acquiring perfection, as there is not the requisite stability, nor does it offer special means of acquiring perfection. On account of the want of stability it can not strictly be called a state in which perfection is exercised like the state of bishops, but in the opinion of Suarez it may be called an imperfect and inchoate state of exercising perfection on account of the priest's duty of working for the sanctification of others.[2]

3. Can Patrick enter Religion and under what conditions?

If Patrick can get the leave of the Holy See he may enter Religion, but that leave is required by the terms of the missionary oath. He should therefore be advised to make up his mind whether as far as can be known he has a true vocation, and then if he wishes to follow it he must ask leave from the Holy See, which will doubtless

[1] Trent, xxiii, c. 16 De Ref.; Manual of Moral Theology, vol. i, p. 634.

[2] Suarez, De Relig., tract. vii, lib. i, cc. 14, 15, 17.

first consult the Bishop and then grant leave or not as it judges to be for the best.

4. Is he bound to obey the Bishop and accept the poor Mission assigned to him?

It may reasonably be doubted whether Patrick is so obliged if he does not wish to leave his present post. To transfer him to a poorer and harder Mission has the appearance not of promotion but of degradation, and Patrick has done nothing to deserve that. When the First Council of Baltimore laid it down that priests were obliged to obey the bishop when he bade them accept any mission within the diocese, the S. Cong. de Prop. Fide substituted for it this clause: "We admonish priests that mindful of the promise made at their ordination they should not refuse to accept any mission assigned to them by the bishop" (Collectio Lacensis recent. Concil., III, p. 22). Which is much less peremptory.

## 4

## RELIGIOUS AND SECULARS

Caius sacerdos secularis pro quadam diœcesi Anglica titulo Missionis ordinatus non levia signa vocationis ad statum religiosum nec ad breve tempus in se expertus consulit de ea re suum missionarium Rectorem, qui negat se intelligere quid ei desit ad summam perfectionem acquirendam, quippe quum legatur in IV Conc. West. d. XII, n. 7: "Insuper a Domino, infirmitatum nostrarum miseratore, eximia nobis in Anglia pro regno veritatis militantibus ad perfectionem sacerdotalem adquirendam conceduntur auxilia. Sacerdotio quo insigniuntur missionarii concredita est cura animarum et ideo omnimoda quæ statui pastorali adnexa sunt dona spiritualia: porro pastores sunt præsertim pauperum, Jesu amicorum 'qui non habent retribuere nobis'; ipsique etiam pauperes, et pauperum eleemosynis nutriti et contenti. Accedit etiam quotidiana et ferme perpetua in aliorum oneribus allevandis, in infirmis solandis, in moribundis sublevandis die noctuque, propriæ voluntatis abnegatio. Denique restat insignis juramenti missionarii et gratia et privilegium quo, in limine apostolatus suscepti, ad instar oblationis Jesu in Cruce factæ, semetipsos vivum et beneplacens sacrificium Deo Patri de die in diem libere se offerunt." "En tibi," dicit Rector, "status perfectionis et quidem stabilis vi juramenti Missionis, paupertas etiam, castitas, et obedientia, quid aliud habere in re-

ligione potes quod ad perfectionem acquirendam conducat." Caius tamen adhuc non contentus secreto consulit Julium regularem qui optimam vocationem agnoscens affirmat nihil impedire quominus Caius statim transeat ad religionem, quum hoc privilegium sit concessum in jure sacerdotibus secularibus, nec obstare juramentum Missionis quod utpote contra consilia evangelica obicem ponat Spiritui Sancto, juxta S. Thomam, in III, dist. 39, q. 1. a. 3, q. 3 ad 2, ubi addit Anglicus hæc verba: "Quod ipso facto quo quis jurat se religionem non intraturum perjurus est." Unde quæritur:

1. Num status sacerdotis secularis curati sit status perfectionis?

2. Num saltem status religionis sit status perfectionis altior statu sacerdotis secularis curati?

3. Quinam status sit majoris dignitatis?

4. Quid ad casum?

### Solution

1. This question is answered above, p. 59.

2. Is the religious state a higher state of perfection than that of a secular priest with the cure of souls?

Yes, the office of a secular priest with the cure of souls is not a state of perfection in the strict sense, for he is bound by no perpetual obligation to give himself to the duties of his office. The Church permits them to abandon their office and enter religion, which is a proof that the religious state is of greater perfection than the office of a secular priest, as St. Thomas teaches (II–II, q. 184, a. 8). This, of course, does not prevent some priests being personally more perfect than some religious, as St. Thomas also teaches (II–II, q. 184, a. 4).

3. Which state is higher in dignity?

Secular priests have precedence over Religious, and this is a mark of their greater dignity of rank in the ecclesiastical hierarchy.

4. The case. The quotation from the Fourth Council of Westminster shows the excellence of the priestly office, and the necessity of having great virtue in order to fulfil its duties worthily. But as was said above, it wants the stability required for a state in the strict sense, and it does not of itself provide the safeguards and the helps which a state of perfection should provide for the acquiring of perfection. The missionary oath does not bind a priest perpetually to devote himself to the cure of souls, nor is he under vows of poverty and obedience. His promise of canonical obedience only binds him to obey the bishop in matters belonging to clerical discipline, and not to leave the diocese without the bishop's consent. In religious life the priest will be under the perpetual obligation of the three vows, and he will have innumerable helps and safeguards for the practice of the highest perfection. Julius was also wrong in saying that Caius might enter religion at once. He must not enter without leave of the Holy See as he is bound by the missionary oath. This oath does not bind him not to enter, but not to enter without leave of the Holy See, whose business it will be to find out whether the public good of the diocese will permit of his abandoning his office and seeking his private good in religion. So that the quotation from St. Thomas is not to the point.[1]

[1] Cf. Instruct. S. C. de P. F., 27 April, 1871, De Titulo Ordinationis, n. 10.

## 5

## THE OBLIGATION OF THE RULE

Caio S. J. religioso contra verba expressa Sancti Fundatoris statuentis nullas Constitutiones, Declarationes, vel ordinem ullum vivendi posse obligationem ad peccatum mortale vel veniale inducere illi Doctores peccare videntur qui tradunt religiosum qui regulam transgrediatur non-obstante dicta declaratione S. Fundatoris saltem frequenter venialiter peccare. Glossis suis, minime fundatis, ut Caio videtur, dicti Doctores laqueum peccati inducunt in quem ne filii propter violationem regulæ inciderent summopere cavit legifer Pater. Contra Caium Titius alter religiosus urget S. Ignatium voluisse ut universæ Constitutiones, Declarationes, et ordo vivendi exacte observarentur, ut aliquam saltem obligationem inducerent, ne mera consilia haberentur, ac præterea naturam status religiosi et ipsius rei esse ponderandum. Unde quæritur:

1. Quid sit regula alicujus Ordinis religiosi?

2. Qualis ordinarie sit obligatio regulæ Ordinum religiosorum?

3. Quid requiratur ut actus humanus sit bonus, quid sufficiat ut sit malus?

4. Quid ad casum?

### Solution

1. What is the Rule of a Religious Order?

The Rule of a Religious Order in the strict sense is

distinguished from the Constitutions. In the older Orders the Rule was a brief method of life drawn up by some of the great founders of Religious Orders, SS. Basil, Augustine, Benedict, and Francis, in order to guide their followers in the striving after the perfection proper to their state. The Constitutions were added subsequently and further developed and explained those Rules. In the Society of Jesus the Constitutions were drawn up by St. Ignatius, and the Rules were added subsequently. In the following case Rule is used widely to designate both Constitutions and Rule in the strict sense.

2. What is ordinarily the obligation of the Rule of Religious Orders?

Certain precepts which are often contained in the Rule bind under grave or venial sin according to the matter and the intention of the lawgiver. What immediately concerns the vows also binds under sin. Rules merely prescribing external discipline bind according to the will of the legislator. In most Religious Orders these rules do not bind directly under pain of sin, but only under the penalty imposed by authority.[1]

3. What is required that a human act be good, and what is sufficient that it be evil?

The object, the end, and all the circumstances must be good that the action may be good; any defect will make it at least partially evil.

4. The case. Caius does not distinguish what certainly requires distinction. The rule of silence, for example, does not bind under sin, so that a Religious who breaks it does not sin against the Rule. But if a Religious talks

[1] Normæ S. C. EE. et RR., 1901, n. 320; S. Thomas, Summa, II–II, q. 186, a. 9.

when he should keep silence, there will generally be some fault in what is said, or in the manner of saying it, or in the motive for breaking silence. There will generally be something said against charity or obedience, some loss of time on one side or on the other, some weakening of discipline, some indulgence of the spirit of curiosity, grumbling, or idleness, so that often there will be venial sin committed. This follows from the nature of things, and could not be prevented even if the founder wished to prevent it. Actions that are inordinate can not be made ordinate at the will of the legislator. This is what St. Thomas (*l.c.*) means, and other theologians after him, when they say that frequently religious commit sin by violating their Rule, even when it does not directly bind under sin.

## 6

## A RELIGIOUS LEGATEE

Caius religiosus visitabat Titium antiquum suum amicum quem moribundum invenit. Caium discessurum revocabat Titius et dicebat se ei legasse in testamento mille libras sterlinas. Caius jam petierat suam ex Ordine dimissionem quam infra paucas hebdomadas locum habituram expectabat, unde rogavit Titium ut curaret legatum solvendum cuidam mensæ argentariæ sibi tradendum quandocumque illud peteret. Post dimissionem acceptam Caius legatum petiit ac recepit, anxius tamen utrum licite et valide necne, de quæstione confessarium consuluit. Unde quæritur:

1. Quid sit votum paupertatis et quinam sint ejus effectus?

2. Quomodo gravitas peccatorum contra paupertatem mensuretur?

3. Quid ad casum?

### Solution

1. What is the religious vow of poverty and what are its effects?

The essence of religious poverty consists in the voluntary renunciation of personal and independent ownership and use of property for love of Jesus Christ. The effects of the solemn vow differ from those of the simple vow. The

effects of the solemn vow are to render the Religious incapable of individual and personal ownership of any property that has money value. The simple vow does not deprive the Religious of the direct, but of the indirect ownership of property; so that he can not lawfully use or dispose of anything that has a money value without the leave of his superior.[1]

2. How is the gravity of sins against poverty measured?

By the same rule that measures the gravity of sins against justice, for as the malice of theft consists in taking what belongs to another against his reasonable wish, so the malice of sins against religious poverty consists in disposing of property without leave of the Superior against one's promise made to God and against that Superior's wish.[2]

3. The case. If Caius was under solemn vows at the time when the legacy was paid in to the bank at his request he has no right to keep the money except with the leave of the Order to which he belonged. For in that case the legacy belongs to his Order: *Quidquid monachus acquirit non sibi sed monasterio acquirit.* If, however, he was only under simple vows he was capable of receiving the legacy validly, as his personal property, and he may keep the money as his. Whether in accepting the legacy he sinned or not against his vow of poverty depends on whether he had at least the reasonably presumed leave of his superior or not.

[1] Manual of Moral Theology, vol. i, p. 649 f.
[2] Ibid., p. 651.

## 7

## VARIOUS QUESTIONS ON POVERTY

Caius religiosus a suo confessario quærit utrum violatio adsit paupertatis religiosæ vel peccatum in aliquo ex sequentibus a se actis. (*a*) Quinque libras sterlinas accepit ab amico distribuendas pauperibus, quas distribuit sine ulla superioris licentia. (*b*) Petiit ab amico ut expensas educationis cujusdam pueri solveret, annuit amicus ea conditione ut summas requisitas toties Caius ab ipso peteret et solveret; quod fecit etiam inconsulto superiore. (*c*) A sacerdote seculari qui onerabatur pluribus Missis pro stipendio celebrandis quam celebrare posset, rogabatur ut duodecim acciperet gratis celebrandas, quod fecit iterum inconsulto superiore. (*d*) Quum superior prohibuisset quominus unquam sui subditi extra domum sine expressa licentia pranderent, laute apud amicum inscio superiore prandit. Unde quæritur:

1. Ad quid obliget votum paupertatis religiosæ?
2. Quale peccatum sit violatio paupertatis?
3. Quid ad casum?

### Solution

1. To what does the vow of religious poverty oblige?

The vow of poverty obliges the Religious not to exercise any act of ownership with regard to things that have a money value without the leave of the superior.

2. What sort of a sin is a breach of poverty?

Of its kind a breach of poverty is a mortal sin, but it may be venial for lightness of matter. Matter which is grave in theft is also grave in violations of poverty.

3. The cases. (*a*) Caius, a Religious, received from a friend £5 for his poor, and distributed the money without the Superior's permission. If he distributed it as his own in his own name he violated poverty; otherwise, if he acted merely as the almoner of his friend. Often Religious are forbidden by rule to keep money, and if the Order to which Caius belonged had such a rule, he broke it by having money in his keeping. (*b*) In asking a friend to pay for a boy's education and acting as his intermediary Caius did not violate poverty. There was no act of ownership in the matter. We suppose that Caius did not make himself liable for the money. (*c*) Caius did not sin against poverty by promising to say twelve Masses gratis for the secular priest. He merely disposed of his Mass, which he may do without violating poverty. (*d*) Against the express orders of his Superior, Caius took dinner with a friend outside the monastery. He sinned against obedience and also against poverty, according to the common opinion. For without the leave of his superior he disposed of food, a thing which has money value. Lugo excuses him from a violation of poverty on the ground that one who eats a dinner merely passively receives a benefit; but it may be replied that one who eats a good dinner is by no means merely passive.

## 8

## A MEDDLING LAWYER

Caius S. J. sacerdos dum exercitia spiritualia tradebat in quodam conventu monialium quæ ex approbatione S. Sedis vota simplicia emittebant, a superiorissa rogabatur utrum sui conventus monialis hæreditatem ex patre intestato adire posset, nam jurisperitus catholicus cujus consiliis utebatur conventus id negabat, ductus, ut aiebat, exemplo recenti apud Jesuitas quorum etiam erat jurisperitus. Caius respondit esse optandum ut jurisperitus ad consilium dandum de legis Anglicæ præscriptis se restringeret, nec legem ecclesiasticam attentaret; nam quatenus etiam professi in Societate Jesu pro monasterio legata accipere possint, hæreditas vero sensu legis Anglicæ potius legato quam hæreditati juris Romani correspondeat, nihil impedire quominus professi S. J. in Anglia etiam hæreditates pro monasterio adeant. Unde quæritur:

1. Quid sit paupertas religiosa et quinam sint ejus effectus ex ipsa rei natura?

2. Quinam sint effectus paupertatis religiosæ ex legis ecclesiasticæ dispositione?

3. Quid de sententiis legisperiti et Caii?

### Solution

1. What is religious poverty and what are its natural effects?

The first part of this question is answered above, p. 67.

The effects which follow from the nature of religious poverty may be summed up by saying that one who has taken a vow of poverty can not lawfully accept, dispose of, or use any property without leave of his superior. Acts of ownership are unlawful, not invalid.

2. What are the effects of religious poverty which are due to ecclesiastical law?

The personal incapacity of one who is solemnly professed to own property, and the consequent invalidity of acts of ownership exercised by him, are effects of positive law. Similarly, that one who has a simple vow may retain the direct ownership of property, but that its income must be spent and not allowed to accumulate, is due to positive law. To the same source is due the rule that whatever a Religious acquires he acquires for his monastery, not for himself; and the special rule of some Orders by which the solemnly professed can not acquire anything by inheritance or operation of law even for their monasteries.

3. The case. The rebuke administered to the lawyer by Caius was not undeserved. It by no means follows that because a professed Father of the Society of Jesus can not succeed to property left by an intestate relative, therefore a nun with only simple vows can not do so. In fact such property becomes hers, but she can not dispose of it or administer it without leave of her Superiors. There is some foundation for what Caius says about the difference between an inheritance in Roman and in English law. The heir in Roman law represented the person of the deceased and succeeded to all his rights and obligations. Hence one good reason why a Religious should not succeed as heir. In English law the executor or per-

sonal representative is more akin to the Roman heir than is the English heir-at-law. Still in practice Jesuits who have taken their last vows are held incapable of succeeding to property that would devolve upon them by operation of law if they had not taken their last vows. Entailed property and property of intestates come under the rule, but not legacies.

## 9

## A WIDE INTERPRETATION OF THE RULE

Caius religiosus medicum consulturus ad civitatem adiit expensis itineris et prandii in civitate comedendi a superiore acceptis. Ipse vero amicum quemdam in civitate invisit et apud eum lautissime pransus et tessera pro via ferrea primæ classis ad domum redeundum munitus pecuniam pro prandio et reditu a superiore acceptam cigarris emendis consumpsit, licentiam enim ut sibi dixit pro rebus parvis acceperat. Postea tamen cigarris consumptis angi scrupulis incepit præsertim quum amicus plus quam libram sterlinam in eum expendisset. Unde quæritur:

1. Qualis licentia superioris religiosum excuset a violatione paupertatis?

2. Quale peccatum committant religiosi qui paupertatem violent?

3. Quid ad casum?

### Solution

1. What sort of leave of the Superior excuses a Religious from a violation of poverty?

Express, virtual, and tacit leave certainly are sufficient to excuse a Religious from committing sin when he disposes of property. Presumed leave is also sufficient if the Superior can not be asked. Whether it is sufficient

or not when the Superior can be got at but is not asked on account of the trouble it involves, or for some similar reason, is a disputed point. Probably it is sufficient, because a Religious who acts with the presumption that the Superior would give his consent if he were asked does not act independently of his Superior; he does not exercise an act of private ownership. Venial sin, however, may be committed even then, because the Superior is unwilling that leave should be presumed without necessity, though he would grant it if he were asked.[1]

2. What sort of sin do Religious who violate poverty commit?

This question was answered above, p. 70.

3. The case. Caius dined with his friend without leave of his Superior. If this act was against the will of his Superior so that he had not even presumed leave, he sinned against poverty according to the common opinion, as was said above. In accepting a first-class ticket for his railway journey back, he did not violate poverty any more than he would have done if his friend had driven him back in his carriage. In buying cigars with the money saved, he sinned against poverty, for he used the money as his own without any leave of his superior. It would, however, only be a venial sin, for the matter was not very grave, and the transaction cost the monastery nothing.

[1] Génicot, vol. ii, n. 94.

## 10

## THE VOW OF CHASTITY

CATHARINA monialis professa in quadam Congregatione religiosa confitetur cum magna difficultate et post multas ambages se contra secundum votum deliquisse pravis cogitationibus indulgendo et etiam se impudice tangendo; ex aliis ejus dictis colligit Titius confessarius eam seminis effusionem procurasse aliquando ut asserit nullo modo ad voluptatem capiendam sed tantum ad pruritum sedandum. Quo audito Titius ei dicit sufficere intalibus tactum impudicum confiteri. Unde quæritur:

1. Quod sit objectum voti religiosi castitatis et num actus internos comprehendat?

2. Num specie distinctum peccatum mollitiei tum apud viros tum apud mulieres detur?

3. Num unquam liceat seminis effusionem extra usum matrimonii procurare?

4. Quid ad casum?

### SOLUTION

1. Quod sit objectum voti religiosi castitatis et num actus internos comprehendat?

" Voto castitatis ob motivum religionis non solum prohiberi externos actus luxuriæ, sed quemlibet etiam internum, adeo compertum est apud omnes ut in eo immorari necesse non sit," ait Lehmkuhl (I, n. 687).

2. Num specie distinctum peccatum mollitiei tum apud viros tum apud mulieres detur?

" Etiam in feminis datur pollutio quæ a venerea voluptate incompleta specifice differat, ideoque in confessione distincte accusanda sit. Ita opinamur cum communi doctrina etiam recentiorum," inquit Génicot (I. n. 396).

3. Num unquam liceat seminis effusionem extra usum matrimonii procurare?

Quatenus seminis effusio voluntaria extra concubitum maritalem est graviter et intrinsece mala nunquam licet illam directe procurare.

4. Ad casum. Ad integre confitendum debet Catharina declarare quoties pravis cogitationibus indulserit, et quoties impudice sese tetigerit. Procurabat seminis effusionem seu plenam delectationem veneream ad pruritum sedandum non ad voluptatem capiendam. Quatenus tamen seminis effusio directe quærebatur tamquam medium ad finem, et illud medium est intrinsece et graviter malum, mortaliter Catharina peccavit. Ait Lehmkuhl (I, p. 586), nota: " Pollutionem non permittere solum sed procurare vel intendere, secundum S. Alphonsum, (III, 476), omnes damnant mortalis peccati, etsi fieret sanitatis vel servandæ vitæ causa. Quare distinctio inter pollutionem physiologicam et moralem, quasi hæc sola, quæ voluptatis causa fiat, illicita sit, licita illa, si voluptatis intentio et approbatio desit, plane excluditur."

Ex dictis sequitur per se non sufficere etiam feminas confiteri tantum impudicum tactum quando completa voluptas venerea est admissa. Attamen mulierem confitentem tactum impudicum non tenetur confessarius interrogare utrum pollutionem admiserit, nam ut ait Génicot, citans Berardi: " Recte scribit Berardi (Prax.

conf. n. 851): 'Dicente penitente *Me tetigi*, si constet quod vere malitiose se tetigerit, præsumendum est, quod actum ad finem suum naturalem perduxerit; unde (sive de viris, sive de feminis agatur) interrogationes de re ista omitti posse dicerem. Verum est quod aliqui actum interrumpunt, etsi malitiose illum inceperint, sed exinde confessarii obligari nequeunt ut omnibus et singulis qui se tetigisse confiteantur, circa hanc ipsam interruptionem in confessionibus ordinariis interrogationes superaddant.' ''[1]

[1] Génicot, vol. i, n. 396.

## 11

## SOLEMNITY OF VOWS

Caius religiosus solemniter professus post prædicationem cum plausu omnium factam in ecclesia quadam seculari rogatur a Paulo missionario qui isti ecclesiæ inservit, ut iterum tempore Paschatis ibidem prædicet, nec ullas excusationes accipere Paulus vult. Caius igitur serio promittit se venturum, attamen domum reversus recordatus sententiæ Doctorum juxta quam votum solemne reddit invalidam omnem obligationem a subdito independenter a voluntate superioris susceptam dubitat utrum ad quidquam ratione promissionis obligetur. Unde quæritur:

1. In quo consistat solemnitas votorum?
2. Quodnam discrimen intercedat inter votum simplex et solemne obedientiæ?
3. Quid ad casum?

### Solution

1. In what does the solemnity of vows consist?

This is a disputed question among canonists and divines. The better opinion seems to be that it consists in a certain efficacy by which a Religious who is solemnly professed is thereby firmly and perpetually devoted and bound to the service of God in religion and to his Order. It may be called a *consecration* with St. Thomas.[1]

[1] Lehmkuhl, vol. i, n. 647.

2. What is the difference between a solemn and simple vow of obedience?

All must admit that there is a difference inasmuch as the solemn vow is dispensed with greater difficulty than the simple vow. Besides this greater firmness in the solemn vow, some authors maintain that the solemn vow renders the Religious incapable of binding himself by promise or contract except with leave of his Superior, while the simple vow does not render a Religious incapable of binding himself, but he can not bind himself lawfully independently of the will of the Superior who can annul the obligation. Other authors deny that there is such a difference between the solemn and the simple vow of obedience, though it certainly exists between the solemn and simple vow of poverty. Génicot, vol. ii, n. 103.

3. The case. Caius, a solemnly professed Religious, seriously promised a secular priest to come and preach for him. The promise was made without his Superior's knowledge, but not against his orders. Caius would certainly be bound by such a promise to do what in him lay to fulfil his engagement. The utter invalidity of such promises made by one who is solemnly professed is not necessary for the end of religious life, and it can not be shown to exist. Caius therefore should tell his Superior of his promise, and unless the Superior uses his authority to forbid him, he should fulfil it.

# THE SACRAMENTS

## THE SACRAMENTS IN GENERAL

### 1

### REVIVISCENCE OF THE SACRAMENTS

Petrus missionarius ad moribundum vocatus eumdem ultimis sacramentis et benedictione in articulo mortis munivit. E cubiculo moribundi post sacramenta administrata egressurus revocabatur Petrus a moribundo qui dicebat—Pater malam confessionem feci. Confessione iterum audita ac absolutione data, Petrus dubitabat utrum cetera sacramenta ac benedictionem iterare necne deberet. Unde quæritur:

1. Quid sit sacramentum informe et formatum?
2. Num remoto obice sacramentum informe reviviscat?
3. Quandonam benedictus in articulo mortis benedictione papali indulgentiam lucretur?
4. Quid ad casum?

#### Solution

1. What is a formed and unformed sacrament?

A formed sacrament not only has everything required for its validity but the requisite dispositions are present in the recipient, so that it produces grace when it is received. An unformed sacrament is validly received, but for want

of the necessary dispositions in the recipient it does not at the time produce grace in the soul.[1]

2. Does an unformed sacrament produce grace when the impediment to grace is removed?

Baptism, Confirmation, Order, when received unformed, according to the common opinion, produce grace in the soul on removal of the obstacle. Many authorities teach the same with respect to Matrimony and Extreme Unction. Penance probably does. The Eucharist does not.[2]

3. When does the last blessing take its effect?

The last blessing takes effect at the moment of death. It may be given immediately after Extreme Unction and then its effect is suspended until the moment when death takes place.[3]

4. The case. Peter, a missionary, had given a dying man the last sacraments and the papal blessing. When he was leaving the room the dying man called him back and told him that the confession which he had just made was a bad one. Peter heard his confession again and absolved him, but was in doubt as to whether he should repeat the other sacraments and the papal blessing. He should not repeat Extreme Unction for it can be received only once in the same sickness, and the doctrine of reviviscence makes repetition unnecessary. Nor need he repeat the last blessing, for it will take its effect at the moment of death. He may and should administer Holy Communion again for the previous Holy Communion was sacrilegious.

[1] Manual of Moral Theology, vol. ii, p. 17.

[2] Ibid., p. 18.

[3] Lehmkuhl, vol. ii, n. 709.

## 2

## THE MINISTER OF THE SACRAMENTS

Caius missionarius sacerdos et religiosus Titii amici ægroti non tamen periculose decumbentis qui in districtu Julii sacerdotis secularis degebat confessionem domi ipsius audiebat et ipsum sacra communione reficiebat. Quod quum Julius audisset scripsit Caio hæc: Nisi ignorasset legem ecclesiasticam quæ a proprio sacerdote sacramenta esse suscipienda præscribat eum non extra districtum ipsi assignatum sacramenta administraturum. Caius se quidquam contra ullam legem ecclesiasticam fecisse negabat, ac si vigeret lex ecclesiastica aliqua communis quæ præscriberet sacramenta a parocho esse petenda, eam missionarios quales in Anglia habemus non afficere affirmabat. Unde quæritur:

1. Num sacramenta sint administranda a proprio parocho ex jure communi et a quasi-parocho in hac regione?

2. Num detur lex specialis quæ religiosos quominus Eucharistiam ministrent prohibeat?

3. Quid ad casum?

### Solution

1. Are the sacraments to be administered by one's own parish priest according to the common law, and by the priest who has charge of the district in England and America?

The parochial sacraments of Baptism, Extreme Unction, Marriage, the Easter Communion, and Viaticum must be so administered according to the common law. Penance may be administered by any priest who has faculties in the place where the confession is heard. In England and in the United States the Easter Communion according to present discipline may be made in any church or public oratory.[1]

2. Is there a special law which forbids Religious to administer the Eucharist?

Religious strictly so called are forbidden under pain of excommunication reserved to the Pope from administering Extreme Unction or the Eucharist as Viaticum to the clergy or laity except in case of necessity without leave of the parish priest.[2]

3. The case. No objection could lawfully be made to Caius hearing the confession of Titius, his sick friend. The faithful have a perfect right to go to confession to any priest who has faculties in the place. With regard to Holy Communion there is more difficulty. Whenever Holy Communion is of precept, as is the Easter Communion and the Viaticum, it is *per se* a parochial sacrament, and Religious are specially forbidden to administer it. However, in the case, communion was not of precept, but of devotion. To carry the Blessed Sacrament publicly to the sick is reserved to the parish priest. In English-speaking countries it is not carried publicly to the sick, and some authors maintain that in such places Regulars may carry Holy Communion to the sick in secret unless the Bishop prohibits it. In England the Bishops make

[1] Manual of Moral Theology, vol. i, p. 627.

[2] Manual of Moral Theology, vol. ii, p. 406.

known their wish that Holy Communion should not be carried to the sick by Regulars or others without the permission of the priest of the district. The Society of Jesus has a special privilege in this matter for use in the Missions under Propaganda.

## 3

## A SHEEP THAT STRAYED INTO THE FOLD

Julius recenter institutus missionarius in quodam districtu in Anglia visitabat Catharinam viduam satis provectæ ætatis. Julio interroganti utrum esset Catholica affirmabat, at simul dicebat se aliquando fuisse Anglicanam. "A quonam fuisti in Ecclesiam recepta?" rogat Julius. "A nemine, sed veni," respondit altera, "semper enim Anglicana audivi utramque esse essentialiter eamdem Ecclesiam Christi, unde incepi ad vestram ire ecclesiam ubi singulis mensibus sacramenta recipio, nunc enim sum vera catholica et scio Anglicanismum hæresi et schismate esse infectum." Rogata ulterius utrum fuisset baptisata, dicebat se supponere id sibi infanti esse factum in ecclesia protestantica vicina ad quam pertinuisset, parentes vero religionem fere neglexisse. Nihil aliud dicebat Julius Catharinæ sed inquirebat a ministro utrum ejus nomen fuerit in registro baptisatorum istius ecclesiæ protestanticæ, et quum nullum illius indicium fuerit inventum, pergebat ad domum Catharinæ quam inveniebat subito morbo correptam et sensibus destitutam. Vellet scire quid a se sit in casu faciendum; et quid si Catharina convalescat. Unde quæritur:

1. Quinam possit valide et licite sacramenta recipere?
2. Quænam sit relatio baptismi ad cetera sacramenta?

3. Quid faciendum cum quis in Ecclesiam recipiatur?
4. Quid ad casum?

SOLUTION

1. Who can receive the sacraments validly and lawfully?

In adults the intention to receive the sacraments is necessary for their validity. For the lawful reception of the sacraments of the living the state of grace is necessary, and for the lawful reception of the sacraments of the dead faith, hope, and attrition. No intention or disposition is necessary in those who have not the use of reason for the reception of the sacraments of which they are capable.[1]

2. What is the relation of Baptism to the other sacraments?

The valid reception of Baptism is necessary for the valid reception of the other sacraments.[2]

3. What is to be done when a convert is received into the Church?

Inquiry must first be made about the baptism of the new convert. If it is certain that he has never been baptized, after a profession of faith he should be baptized absolutely. If it be doubtful whether he was ever baptized he must make a profession of faith, be baptized conditionally in private with holy water without the ceremonies in England, be conditionally absolved from censures, and then from sin after a full confession of his whole life. If he has been validly baptized already, he should make a profession of faith and be absolved from censures.[3]

4. The case. One may seriously doubt whether

[1] Manual of Moral Theology, vol. ii, p. 41 ff.

[2] Ibid., p. 41.

[3] Form for the Reception of a Convert, edited by the Bishop of Newport.

Catherine had ever been baptized. She herself supposed that she had been, but she had no positive information on the point; her parents were careless about religion, and her name was not to be found in the parish register. She should therefore be baptized conditionally again. If she is in danger of death, this should be done at once, though she is not conscious, and then she should be absolved conditionally and anointed. If she is not in danger of death, the priest should do nothing till she recovers. After recovery in any case she should be formally received into the Church according to the method described above, for as she had not formed an express intention of receiving Baptism, the validity of the Baptism administered while she was unconscious would be doubtful, even if she had not been baptized in infancy. Whether the sacraments which she had been in the habit of receiving every month were valid or not would depend on whether she had been validly baptized. Her reception of them was not lawful, but her good faith excused her.

## 4

## THE INTENTION TO RECEIVE BAPTISM

Paulus Anglicanus ad fidem Catholicam conversus et sacerdotio auctus nihil magis in votis habebat quam ut patrem in ecclesiam reciperet. Quum de fide Catholica cum patre colloqueretur hic semper finem discursui imposuit dicendo: "Nec volo nec nolo converti; sed si tibi consolationi erit potes me ante mortem baptisare:" nam dubie tantum erat infans baptisatus. Quodam die nuntium accepit Paulus patrem graviter ægrotare, ad quem quum festinasset eum jam intra horæ spatium mortuum invenit. Sine mora sub conditione patrem baptisatum absolvit et unxit pariter sub conditione. Unde quæritur:

1. Qualis intentio requiratur in subjecto sacramentorum?
2. Quomodo mors apparens a morte reali distingui possit?
3. Quid ad casum?

### Solution

1. What sort of intention is required in the subject of the sacraments?

A neutral intention is not sufficient. In order that Baptism may be certainly valid the adult to be baptized must have at least an habitual and express intention to receive the sacrament. An implicit intention will probably

suffice. For Penance and Matrimony a virtual intention is necessary. A general or implicit intention is sufficient for the other sacraments.[1]

2. How can apparent death be distinguished from real death?

The absence of vital functions, breathing, pulse, cadaveric spots on the body, and the loss of their luster by the eyes, are more or less certain signs of death. Unequivocal signs of death are putrefaction, and cadaveric rigidity, though the latter does not always appear so as to be perceptible.[2]

3. The case. Paul, a convert and a priest, wished greatly to convert his father, whose baptism as an infant was doubtful. After talking about conversion the father used to close the conversation by saying: "I am indifferent about conversion, but if it will be any consolation to you, you may baptize me before death." One day Paul got a message that his father was seriously ill and he hastened off and found that he had died within an hour. He at once administered baptism, penance, and Extreme Unction conditionally. The father was not in fit dispositions to be received into the Church during his life; he had not the requisite faith. However, he had consented to be baptized before death, and was presumably in good faith. According to recent authorities real death, which is the separation of soul and body, does not take place for some time after apparent death. The length of the period between apparent and real death, according to these authorities varies in different cases;

[1] Manual of Moral Theology, vol. ii, p. 42 f.

[2] Capellmann, Pastoral Medicine, p. 201: Antonelli, Med. Pastoralis, vol. ii, nn. 568 ff.

one or two hours is a safe mean reckoning. Paul is not to be blamed for using this opinion and doing all that he could do for his father's salvation. For although his father had no right to the sacraments inasmuch as he was not a visible member of the Church, yet it is a probable opinion that he had the requisite dispositions for being made one and for receiving the sacraments under condition at death.

## 5

## SIMULATION OF THE SACRAMENTS

Agnes propter metum gravem a patre satis severo incussum matrimonium cum Alberto cui maxime repugnat inire promiserat. Ipso mane matrimonii ineundi petit Caium parochum ea intentione ut se metu coactam esse declaret. Attamen in ipso confessionali consilium mutat, aliquos defectus manifestat et petit absolutionem. Quum Caius certam materiam absolutionis obtinere nequeat, simplici benedictione eam dimittit, quin tamen quidquam de absolutione non data eam moneat. Postea Agnes formam matrimonii init quod quum postea esse ex gravi metu initum legitime fuerit probatum, nullum et irritum esse auctoritate ecclesiastica declaratur. Quum Agnes proxima vice ad confitendum venit nec quidquam dicit de matrimonio simulato Caius dubius hæret utrum eam interrogare necne debeat. Unde quæritur:

1. Quid sit sacramentum simulare?
2. Num unquam liceat sacramentum simulare?
3. Quid ad casum?

### Solution

1. What is simulating a sacrament?

The 29th proposition condemned by Innocent XI

asserted: "Urgent and grave fear is a just cause for simulating the administration of the sacraments." This false proposition was applied by its defenders to such cases as the following: To avoid death a priest might utter the words of consecration over all the bread in a baker's shop without the intention of consecrating it; or the words of absolution over an indisposed penitent without intending to absolve him; or might give a non-consecrated Host to one who was unworthy to communicate. Hence simulating the administration of a sacrament acquired a technical meaning and signified the use of the matter or of the form of a sacrament without the intention of completing and making the sacrament.[1]

2. Is it ever lawful to simulate a sacrament?

The absolute condemnation of the above proposition by the Holy See shows that it is never lawful to simulate a sacrament either formally, when deception is intended, or materially, when deception is not intended but only permitted. The chief reason is because by such simulation a portion of a sacred rite instituted by Christ for the making of a sacrament and the conferring of grace on the souls of men, is used without the intention of completing the sacrament. Such an illusory use of a sacred sign is greatly injurious to God, and can not be rendered lawful even by the pressure of grave fear.

3. The case. Agnes should have kept to her resolution of telling the parish priest the truth about her case. Still she was not guilty of simulating the sacrament of marriage, for both the matter and form of this sacrament lie in the consent of the parties, and as Agnes did not consent, she did not simulate marriage in the technical sense. *A*

[1] Viva, Damnatæ theses.

*fortiori* Caius did not simulate the sacrament of Penance, for he dismissed her with a blessing. Caius, therefore, was under no obligation of questioning Agnes about the simulation of marriage.

# BAPTISM

## 1

## BAPTISM AT DEATH

Caius in Africa meridionali missionarius instruxerat Titium in fide Catholica quam Titius quidem credidit veram, attamen eam amplecti ante mortem noluit. "Volo ante mortem baptisari," dicebat, "ut Christianus moriar quamvis vivere Christianus non possim." Post paucos annos Caius audiens Titium esse moribundum ad eum convolabat quem sensibus destitutum quum invenisset baptisabat. Postea tamen Titius convalescebat nec admittere se esse Christianum volebat. Quærit igitur Caius utrum debeat iterum baptisare Titium si quando in periculo mortis constituatur. Unde quæritur:

1. Quænam conditiones requirantur ad validitatem baptismi ex parte subjecti?

2. Quaenam conditiones requirantur ad liceitatem baptismi ex parte subjecti?

3. Num baptismus reiterari possit vel debeat saltem sub conditione?

4. Quid ad casum?

### Solution

1. What conditions are required for the validity of baptism on the part of the recipient?

The only condition on the part of the recipient who

has the use of reason that is requisite for the validity of Baptism is a wish to be baptized. An habitual wish is sufficient. In such as have never had the use of reason, not even this wish is required for the validity of the sacrament.[1]

2. What conditions are required on the part of the recipient for the lawful reception of Baptism?

Faith, hope, and at least attrition for sin are necessary dispositions for the lawful reception of Baptism.[2]

3. May Baptism be repeated or ought it to be repeated at least under condition?

Baptism may and should be repeated under condition whenever there is prudent doubt whether a person has been validly baptized. Otherwise it should not be repeated.[3]

4. The case. Titius had expressed a wish to be baptized before death. He must be presumed to have intended to procure Baptism when he was in danger of death, as he could not wait till he knew whether death in reality ensued or not. Caius, then, acted according to his express will when he baptized him on finding him out of his senses and in danger of death. The Baptism was therefore valid though afterward Titius would not acknowledge his obligations, and it should not be repeated if he again falls into the danger of death.

[1] Manual of Moral Theology, vol. ii, p. 62.
[2] Ibid., p. 62.
[3] Ibid., p. 63.

## 2

## A YOUNG CONVERT

Anna puella Protestantica duodecim annos nata et per plures annos in schola elementari Catholica a monialibus educata petit a Titio qui isti Missioni in Anglia sitæ inserviebat ut in eccelesiam Catholicam recipiatur. Titius ex responsis suis quæsitis datis inveniteam esse puellam optimæ indolis, satis bene in religione Catholica instructam, et firmam habere intentionem religionem Catholicam amplectendi. Attamen bene scit eam infra breve tempus scholam relicturam, patrem ecclesiæ Catholicæ maxime infensum voluntatis filiæ esse ignarum et certo certius consensum negaturum, et merito timet ne si Anna recipiatur acatholici sat multi qui suos liberos ad eamdem scholam mittant de suis anxii illos a schola removeant. Dubius igitur quærit:

1. Quæ dispositiones in adultis requirantur ut ipsi ad baptismum admittantur?

2. Num vel quando liceat filios familias infidelium vel hæreticorum baptisare?

3. Quid faciendum in casu supra exposito?

### Solution

What dispositions are required in adults that they may be admitted to Baptism?

For valid reception they must have the will to be bap-

tized, and that it may be lawful they must have faith, hope, and that sorrow for sin which is called attrition.[1]

2. Is it lawful to baptize the children of infidels and heretics, and when?

The First Council of Westminster (d. XVI, n. 6) says: "Baptisare potest sacerdos infantes parentibus acatholicis natos, dummodo consensus habeatur eos in vera religione esse educandos, et patrinum seu matrinam catholicam habeant." When children come to the use of reason they are their own masters *per se* and independent of their parents in what relates to religion. However, in concrete cases, converts of tender years should seldom be received unless they can be brought up amid Catholic surroundings. The danger of their afterwards falling away, of scandal and the opposition of parents and others must be considered, lest more harm than good be done. Non-baptized parents are not subject to the Church and St. Thomas teaches that it would be against natural justice if an infant of such parents who is in no danger of death were to be baptized without their consent.[2]

3. What is to be done in the case?

Ann, a girl of twelve, educated by nuns in a Catholic elementary school, asked Titius, the parish priest, to receive her into the Church. Titius finds out that she is a good girl, well instructed in the Catholic faith, and determined to become a Catholic. However, in a short time she will leave school, her father is anti-Catholic, would certainly refuse his consent to her becoming a Catholic, and Titius fears that if she were received many non-Catholic parents would withdraw their children from

[1] Manual of Moral Theology, vol. ii, p. 62.
[2] Ibid., p. 63.

the school. Under these circumstances Titius should tell Ann that he will receive her if she can get her father's consent; that until she can do this she should foster the grace that has been given her by being good, constant at her prayers, reading good Catholic books, and patiently waiting till she is older or can get her father's leave to enter the Church.

## 3

## REMEMBERED HIS OWN BAPTISM

Caius ad fidem Catholicam e secta anglicana conversus rogatur de suo baptismo a Titio sacerdote eum in Ecclesiam recepturo; "Bene omnes circumstantias recordor," ait Caius, "nam Unitarianus natus annos viginti factus sum Anglicanus. Minister sane Anglicanus ante baptismum mihi explicuit ritum baptismi nullius efficaciæ supernaturalis esse, tantummodo esse ceremoniam externam qua homines ad cœtum Christianum sint aggregati. Qua declaratione attonitus, ulterius inquirere incepi, et nunc tandem aliquando in veram Ecclesiam recipi volo." Ex aliis Caii dictis Titius colligit ministrum Anglicanum haud ea reverentia et attentione esse usum in baptismo conferendo qua uti deceat, ceterum rite materiam et formam adhibuisse, dubitat tamen utrum necne saltem sub conditione Caium baptisare debeat. Unde quæritur:

1. Quæ attentio et intentio requirantur in sacramentis conferendis?

2. Quid præscribatur quoad baptisandos conversos ad fidem in Anglia?

3. Quid ad casum?

### Solution

1. What attention and intention are required in conferring the sacraments?

Attention, or advertence of the mind to what is being done, is requisite under pain of venial sin for the lawful administration of the sacraments, but it is not necessary for their validity. What sort of intention is required is explained by all approved authors.

2. What is prescribed with regard to baptizing converts in England?

The First Council of Westminster (d. XVI, n. 7), decreed: "Regulam absolute innovamus, præcipientes, omnes a Protestantismo conversos esse baptisandos conditionate, nisi ex indubiis probationibus certissime constet in ipsorum baptismo omnia rite fuisse peracta, quoad materiæ et formæ applicationem. Hujusmodi baptismus non fiat publice sed omnino privatim, cum aqua lustrali et absque cæremoniis. Confessio etiam sacramentalis semper in tali casu est exigenda."

From this decree may be gathered what is prescribed by other ecclesiastical regulations: viz., that whenever there is question of receiving any one into the Church, inquiry should be made about the postulant's Baptism. After inquiry, when there is any prudent doubt whether the person was ever baptized or whether the Baptism was valid, Baptism is to be administered conditionally, according to the method laid down in the decree.

3. The case. Caius well remembered all the circumstances of his Baptism administered by an Anglican minister when he was twenty years old. The Anglican minister did not act very reverently, but he rightly applied the matter and form. The intention to baptize Caius must be presumed. As all the essentials for valid Baptism were present, the Baptism was valid, and Titius must not baptize him again. He must absolve him from

censures after he has made a profession of faith, and then direct him to make a general confession of his sins committed after Baptism. The Anglican minister did not hold the Catholic faith about Baptism, but his heresy could not make the sacrament invalid, if it had all the essentials for validity.

## 4

## A TOO ZEALOUS PASTOR

Caius sacerdos zelantissimus pro salute animarum visitare solet non tantum Catholicos sed etiam quærere extra ovile oves perditas. Si invenit in familiis Protestanticis infantes debiles vel ægros qui probabiliter usum rationis nunquam sunt adepturi, rogata licentia eis benedicendi eos secreto baptisat, applicando eorum capitibus sudariolo antea madefacto. Julius vero alius sacerdos qui eidem Missioni inservit Caium condemnat injuriæ contra sacramentum et infantium parentes. Hinc quæritur:

1. Quinam sint minister et subjectum baptismi?
2. Num liceat infantes baptisare invitis parentibus?
3. Quid ad casum?

### Solution

1. Who is the minister and who the subject of Baptism?

The ordinary minister of solemn Baptism is the parish priest, who may delegate his office to another priest, and for just cause even to a deacon. In case of necessity any one may baptize.[1]

The subject of Baptism is any living person who has not been baptized.

2. Is it lawful to baptize children against the wish of their parents?

[1] Manual of Moral Theology, vol. ii, p. 52.

If the parents are baptized Christians the Church has a right to baptize their children even against their will, inasmuch as they themselves are subjects of the Church, and bound to obey her laws. In practice, such a right can only be used rarely and with great caution and proper safeguards. If the parents are not baptized and therefore not subject to the Church's laws, their children may not be baptized before they have reached years of discretion without the consent of the parents except when they are in danger of death. After they have attained years of discretion they are not subject to their parents in the matter of religion.[1]

3. The case. Caius should exercise discretion in his zeal. If the children that he baptizes have never previously been baptized and are in danger of death his zeal may be praised. No injury is done to the parents and the children on dying are assured of a place in heaven. If the children have previously been baptized or if they are not in danger of death when he baptizes them, Caius does wrong. In the former case he is guilty of reiterating Baptism, in the latter he baptizes a child who will not be brought up as a Catholic. The mere probability of their dying before they attain the use of reason is not sufficient to justify his action. Mere application of the wet handkerchief to the children's heads would not be valid Baptism; the water must run, or at least the wet handkerchief must be moved so as to express the sacramental sign of washing.

[1] Manual of Moral Theology, vol. ii, p. 63.

## 5

## A CONVERT FROM JUDAISM

Rebecca parentibus Judæis nata ab eisdem in conventu educanda monialibus erat concredita. Sexdecim annos jam habens proximo anno e conventu egressura educatione finita rogavit Titium sacerdotem regularem ut ipsam in Ecclesiam reciperet. Titius invenit eam bene in Catholica fide instructam, de ejusdem veritate plane persuasam, sed parentes prorsus invitos quominus Catholicam religionem amplectatur publice. Titius autem nescit utrum in his circumstantiis ejus precibus annuere debeat saltem ut secreto Catholica fiat. Unde quæritur:

1. Quisnam sit baptismi subjectum?

2. Num filii familias invitis parentibus baptisari possint?

3. Si filius infidelium vel acatholicorum baptisetur quid sit circa ejusdem educationem cavendum?

4. Quid ad casum?

### Solution

The first question was answered above, p. 103 and the second, p. 104.

3. If a child of infidel or non-Catholic parents be baptized, what should be done about its education?

Means should be taken to secure the child's education in the Catholic faith. With a view to this the First Council of Westminster (d. XVI, n. 6), decreed: "Baptisare potest sacerdos infantes parentibus acatholicis

natos, dummodo consensus habeatur eos in vera religione esse educandos, et patrinum seu matrinam Catholicam habeant." The Holy Office has more than once replied to questions on the point that unless those who are offered for Baptism are in danger of death it is not lawful to baptize them if they are to be left under the care and education of their infidel parents. Thus on March 15, 1770, the following answer was given: "Non licere extra mortis periculum conferre Baptismum ab utroque parente infideli oblatis quoties iidem infantes post receptum baptisma sub potestate et educatione eorumdem infidelium genitorum sunt relinquendi." [1]

4. The case. Rebecca should not be received unless she can publicly profess and practise the Catholic faith. She should be told that there would be no difficulty in receiving her if she could get her father's consent. Even if she can not get her father's consent to her reception into the Church directly, if a place in a Catholic family or amid Catholic surroundings could be provided for her, and her father agreed to her accepting the place, she might then be received at once. If she is under the necessity of returning to her father's house and living under his authority, and if she can not get his consent to her becoming a Catholic, her reception should be put off till she becomes her own mistress. The danger of perversion, of scandal, of complaints against convents, in general render immediate reception unadvisable in these circumstances. She should be taught how she may preserve her good dispositions by prayer, leading a good life, reading good books, etc., until such time as she can be received into the Church.

[1] Bucceroni, Enchiridion Morale, p. 109.

## 6

## WHAT BAPTISM IMPLIES

Sequens casus fuit propositus in "Pastoralia" Jan., 1901.

Quodam die dominico mulier cum matrina Protestantica attulit infantem ad ecclesiam Catholicam baptisandum. A parocho interrogata dixit se et maritum fuisse in fide Catholica educatos, amplius tamen eam non profiteri, quum una religio sit æque vera ac alia. Quatuor alios liberos fuisse quidem baptisatos in ecclesia Catholica, nunc vero scholam publicam (*Board-school*) frequentare, nec se ad scholam Catholicam eos mittere velle. Se hunc infantem attulisse ad ecclesiam Catholicam baptisandum quia ceteri ibidem baptisarentur, nec in ecclesia Protestantica nec alibi fore baptisatum nisi a parocho baptisetur. Unde parochus quærit:

1. Num infantem baptisare debuerit?

2. Quum patrinus Catholicus non esset procurandus num matrinam protestanticam admittere ei licuerit?

3. Secus num sine patrino et cum cæremoniis baptisare debuerit?

4. In illo casu quid de responsis in Rituali, et quinam infantem tenere debuerit dum baptisaretur?

### Solution

1. Ought the priest to have baptized the child?

The Baptism would indeed have been valid, but it may

be doubted whether the priest should administer Baptism in such cases. The child is in no danger of death, both parents have fallen away from the Faith and no longer profess to be Catholics, the mother openly asserting that one religion is as good as another. The other children are going to a non-Catholic school, and there is no probability that this one will be brought up a Catholic. Under these circumstances the priest should not baptize the child unless he can in some way secure a Catholic education for it.

2. As a Catholic sponsor could not be procured, could a Protestant be admitted in such a case?

No, a Protestant may never be admitted as a sponsor in Baptism.

3. Ought Baptism to be given without sponsor and with the ceremonies?

The Sacred Congregation de Propaganda Fide, April 1, 1816, answered that if proper sponsors can not be had, Baptism which is necessary must be given without sponsors who are not necessary.[1]

4. In that case who should make the answers in the Ritual, and who should hold the infant while it is being baptized?

The priest himself might make the answers, and the mother or any one else might hold the child, for that act alone would not make her a sponsor.

[1] Collectanea S. C. de P. F., n. 618.

## 7

## PARENTS' NEGLECT

Lucius sacerdos in Anglia missionarius non sine moerore invenit plures pueros et puellas in sua schola elementari non esse baptisatos. Quidam sunt ex parentibus Catholicis quidem sed valde negligentibus et vitiosis, alii Protestantibus qui in rebus religiosis sunt indifferentes, nati, quos omnes post debitam instructionem in catechismo datam volentes baptisabat, et quemdam Lucillum quatuor annos Catholicis parentibus natum valde pedibus et pugnis reluctantem vi sacro fonte abluit. Quæ non sine admiratione vicini sacerdotes audierunt. Unde quæritur:

1. Num filii invitis parentibus baptisari valeant?

2. Num et quibus sub conditionibus filii hæreticorum baptisari possint?

3. Quo tempore et qua obligatione baptismum pro filiis procurare parentes teneantur?

4. Quid ad casum?

### Solution

The first question was answered above, p. 104, and the second, p. 98.

3. When and under what obligation are parents bound to have their children baptized?

Catholic parents are bound to have their children baptized as soon after birth as they can conveniently. According to approved theologians it would be a grave sin for

parents to put off their child's Baptism for a month without good cause.[1]

4. The case. Lucius did right to baptize the children of Catholic parents who had not been baptized. They are being educated in the Catholic school and they can thus be instructed in the Catholic religion. It is plain that there has been grave and culpable negligence on the part of their parents. For the same reason he was right too in baptizing Lucillus. He was only four years old and had not yet the use of reason, so that his resistance need not cause scruple or doubt. It was probably directed against a function which he considered objectionable but which he did not understand. As his parents were Catholics the Church had a right to baptize him. Lucius should not have baptized the children of Protestant parents without procuring a promise from the parents that they should be brought up Catholics and allowed to practise the Catholic religion. He should in addition have provided them with sponsors whose duty it would be to watch over their Catholic education. The Baptism, however, even of these was valid, and Lucius should do what he can to educate them as Catholics and induce them to lead Catholic lives.

[1] Manual of Moral Theology, vol. ii, p. 63.

## 8

## NON-CATHOLIC SPONSORS

Julius missionarius in Anglia tempore consueto quadam Dominica vadit ad ecclesiam ad baptismum administrandum si qui forte sint baptisandi. Invenit infantem baptisandum cum matrina et Tullio Catholico qui dicit se esse procuratorem pro avunculo infantis, qui promisit se fore patrinum. Tullius interrogatus de avunculo dicit eum esse Anglicanum, sed divitem a quo spes non exiguas parentes infantis concipiunt. Julius vero dubius est quid in casu facere debeat. Unde quæritur:

1. Quinam et quot patrini esse possint vel debeant?
2. Quænam sint patrinorum obligationes?
3. Num heterodoxus patrinus in baptismo Catholico, vel Catholicus in baptismo hæretico admitti possit?
4. Quid ad casum?

### Solution

1. Who may be sponsors in Baptism and how many may there, or ought there, to be?

All who have attained the use of reason and have been baptized themselves may be sponsors unless they are expressly excluded by law. The following are excluded: "The parents of the person baptized, if both are living, heretics, those who are excommunicated, or interdicted, public criminals or people without reputation, those who

are ignorant of the rudiments of the Faith, and members of Religious Orders. Others are sometimes prohibited by Provincial law, as the following in England: those who have not reached the age of puberty, those who have not been confirmed or who have not made their Easter duties, and ecclesiastics." [1]

According to the Council of Trent one only, whether male or female, or at most one male and one female may be admitted as sponsors.

2. What are the duties of sponsors?

They answer for the person baptized at Baptism, receive him from the hands of the minister after Baptism, and if necesssary act as his instructors in the Faith.

3. May a non-Catholic sponsor be admitted in Catholic Baptism, or may a Catholic be sponsor in non-Catholic Baptism?

No; both are prohibited as being *communicatio in sacris.*

4. The case. Julius can not allow the Anglican uncle to be sponsor in Baptism for a Catholic child. If he is afraid that great offence would be given to the parties concerned if he were openly to refuse to allow him to be sponsor the easiest way out of the difficulty would be to let the godmother, who is a Catholic, act alone without saying anything to Tullius. The latter would be permitted to stand by while the Baptism was being administered, but he would not be allowed to touch the child.

[1] Manual of Moral Theology, vol. ii, p. 60.

# CONFIRMATION

## 1

## NECESSITY OF CONFIRMATION

Caius in Anglia Missionarius districtum circumit ut sciat quinam confirmari debeant ab Episcopo mox venturo. Invenit Tullium patremfamilias Catholicum qui se unquam fuisse confirmatum negat. Interrogatus quomodo id accidisset dicit se ex verecundia non venisse ut tempore statuto puer confirmaretur, nec propter eamdem causam postea id sacerdoti confiteri ausum esse. Caius ei persuadet ut saltem nunc sacramentum tam necessarium nostris diebus suscipiat, utrum vero Tullius ob neglectum debeat generalem confessionem ab ætate puerili instituere dubitat. Unde quæritur:

1. Quænam sint materia et forma confirmationis?
2. Quandonam et a quo sit conferenda?
3. Num sit sacramentum necessarium?
4. Quid ad casum?

### Solution

1. What are the matter and form of Confirmation?

The common opinion is that the anointing with chrism, together with the simultaneous imposition of the hand of the bishop on the forehead of the confirmed person while he makes on it the sign of the cross with the chrism,

is the adequate and essential matter of the sacrament. The form is: "I sign thee with the sign of the cross and I confirm thee with the chrism of salvation, in the name of the Father, and of the Son, and of the Holy Ghost." [1]

2. When and by whom is Confirmation to be administered?

According to modern discipline Confirmation is given to baptized persons who have attained the use of reason and have been well instructed in Christian doctrine. The bishop of the diocese is the ordinary minister of Confirmation; a priest may be delegated by the Pope to administer it.

3. Is it a necessary sacrament?

It is not necessary *necessitate medii;* whether it is necessary *necessitate præcepti* is a disputed point among theologians. St. Thomas with many other approved authors deny that it is.[2]

4. The case. Tullius neglected to receive Confirmation not out of contempt but from shyness. As is clear from the dispute among theologians, it is not certain that in doing this he committed a mortal sin, and no one should be held guilty of mortal sin unless it is clear and certain that he has committed mortal sin. Tullius, therefore, should not be obliged to make a general confession, unless indeed he thought that he sinned mortally by acting as he did.

[1] Manual of Moral Theology, vol. ii, p. 67 f.
[2] Ibid., p. 74.

# THE HOLY EUCHARIST

## 1

## ADULTERATED MATTER

Sylvius sacerdos audit adulterationem ciborum eo usque pervenisse ut triticum et vinum quæ altari inserviant inficiat. Nam ut farina sit quam maxime alba ex qua hostiæ conficiuntur ablato germine tritico admiscetur alumen; ex modica autem quantitate vini genuini ope aquæ et artis chimicae quantitas quadrupla conficitur; et cum tali materia Sylvius fere per annum et sæpe pro stipendio Missam celebravit. Mediis opportunis sumptis ut deinceps saltem materiam debitam habeat, quærit quid a se quoad præteritum sit faciendum. Unde quæritur:

1. Quænam sit materia SS. Eucharistiæ?

2. Num consecratio sub una specie sit valida, vel unquam licita?

3. Quid ad casum?

### Solution

1. What is the matter of the Holy Eucharist?

The remote matter of the Eucharist is twofold, wheaten bread and wine of the grape.[1]

2. Is consecration under one species valid, and is it lawful?

[1] Manual of Moral Theology, vol. ii, p. 82.

It is certainly never lawful. Consecration of one species is certainly valid when there is the intention of consecrating both species, but the consecration does not take effect, because, for example, the host is not wheaten bread or what is in the chalice is not wine of the grape. Even if a priest pronounces the words of consecration over one species with the intention of consecrating it alone, the consecration will be valid, but it does not constitute the Sacrifice of the Mass, since Mass consists essentially of the consecration under both species.

3. The case. The taking away of the germ from the grains of wheat and the addition of a little alum for the sake of greater whiteness would not change the wheat substantially, and so hosts made of such wheat would still be valid matter for the Eucharist, but it should not be employed. The sophisticated wine, however, was not wine of the grape, and it was not valid matter for Mass. The consecration under one species was nevertheless valid, and perhaps sufficient for the application of the fruits of Mass to the intentions of those who gave the stipends. Ballerini says that in such cases priests have recourse to the Holy See to know what should be done, but he admits that probably all obligations resting on the priest by reason of accepting the stipends have been fulfilled by the consecrations under one kind.[1]

[1] Ballerini, Opus Morale, tract. x, sec. iv, n. 230.

## 2

## FASTING COMMUNION

Titius Missionarius in Anglia sacerdos vult scire utrum non-jejunæ possit S. Communionem deferre Mariæ parochianæ quæ phthisi laboret et singulis binis horis lac ex medici præcepto sumere debeat quamvis lectulo non decumbat. Aliquoties melius se habere sentiens Maria venit ad Missam hora nona a.m. et vellet tunc etiam non-jejuna S. Communionem recipere si hoc pe mittatur. Ipse etiam Titius senex aliquando *influenza* ejusque sequelis laborans a Missa dicenda abstinere per duos vel per tres menses cogitur. Posset autem aliquando Missam celebrare si extractum carnium vel aliquid hujusmodi prævie sumere liceret, de quo tamen dubitat, et edoceri petit. Unde quæritur:

1. Ad quid obliget lex jejunii ante S. Communionem?
2. Quid indulserit decretum S. C. C., Dec. 7th, 1906?
3. Quid ad casum?

### Solution

1. To what does the law of fasting before Holy Communion oblige?

This law forbids those to receive Holy Communion who have taken any food or drink whatever after mid-

night. Those who are dangerously ill are excepted from the obligation of this law.

2. What mitigation was permitted by the decree S. C. C., Dec. 7th, 1906?

The dispositive portion of the decree is as follows: "Infirmi qui jam a mense decumbunt absque certa spe ut cito convalescant de confessarii consilio SS. Eucharistiam sumere possunt semel aut bis in hebdomada, si agitur de infirmis qui degunt in piis domibus ubi SS. Sacramentum asservatur, aut fruuntur privilegio celebrationis Missæ in oratorio domestico; semel vero vel bis in mense pro reliquis, etsi aliquid per modum potus antea sumpserint." By a subsequent decree dated March 6th, 1907, it was explained that the term *decumbunt* comprised those "qui quamvis gravi morbo correptos et ex medici judicio jejunium naturale servare non valentes nihilominus in lecto decumbere non possunt aut ex eo aliquibus horis diei surgere queunt."

The conditions therefore required for the application of this decree are: (*a*) The person should have been seriously ill for a month, and there should be no reasonable hope of recovery within a short time, say, a month. (*b*) With the advice of the confessor Holy Communion may be received once or twice a week if the Blessed Sacrament is reserved in the house where the sick person lies, in other cases once or twice a month. (*c*) Though something liquid has been taken after midnight, *e.g.*, tea, chocolate, soup, even if an egg has been broken up in it.

3. The case. From what has been said it is clear that Titius may take Holy Communion to Mary even though she has taken milk every two hours after midnight.

The decree is not applicable to those who can and do

go to Church not fasting, according to the interpretation put upon the decree at Rome, and followed by approved authors. "Videtur requiri ut S. Eucharistia sit in cubiculum deferenda," says Génicot, (II, n. 202. ed. 6a).

The mitigation of the law is granted to the faithful who wish to communicate, not to priests who wish to say Mass.

## 3

### THE FAST BROKEN

Titius sacerdos qui solus cuidam Missioni inservit tussi laborans pastillum in os immittere solet ut noctu dormire possit. Quadam nocte horologio horam duodecimam sonante expergefactus præter intentionem aliquid pastilli quod adhuc in ore manebat deglutivit. Dubitare incipit utrum liceat mane Missam celebrare quam populus audire debeat ex præcepto (erat scilicet dies dominica), vel sine Missa eos dimittere debeat. Unde quæritur:

1. Quid requiratur ad comestionem qua jejunium ante S. Communionem præscriptum frangatur?

2. Num parvitas materiæ vel quoad cibum sumptum vel quoad tempus post horam duodecimam in hac lege jejunii admitti possit?

3. Num intentio facere possit ut jejunium aliter non fractum frangatur?

4. Quid ad casum?

#### Solution

1. What is required for a violation of the fast prescribed before Holy Communion?

What is taken must have the nature of food or drink or medicine; it must be from without the mouth; and it must be taken in the way food is usually taken, not *e.g.*, by respiration.[1]

[1] Manual of Moral Theology, vol. ii, p. 110.

2. Is lightness of matter allowed in this law either in what is taken or in the time?

No, the law admits of no lightness of matter, for the prohibition does not fall on the food or time, but on the receiving of Holy Communion after taking the least food or drink after midnight.[1]

3. Can the intention cause the fast to be broken when otherwise it would not be broken?

According to the rubric of the Missal (De Def., IX, 3) if a drop of water is swallowed inadvertently while washing the mouth it does not hinder Holy Communion. And theologians apply the same rule to a drop of rain, or soup mixed with the saliva and swallowed inadvertently. In these cases the common opinion, which St. Alphonsus says is certainly to be held, maintains that if this is done intentionally the fast is broken.[2]

4. The case. Midnight is past after the first stroke of twelve. Titius therefore after twelve swallowed a piece of the pastille which still remained in his mouth. In doing this he broke his fast even though he did it unintentionally, for the sucking of the pastille must be regarded as a continuous action of eating which did not finish until after twelve.[3]

If the necessity for the people to hear Mass is the only reason why Titius should say it, he should abstain from saying it, and explain the reason to the people. He may have prayers and give them a sermon. If he has reason to fear scandal or grumbling on account of his acting in this way he may say Mass, according to a sound opinion.[4]

[1] Manual of Moral Theology, vol. ii, p. 110.

[2] Theol. Mor., lib. vi, 279.

[3] Ibid.

[4] Manual of Moral Theology, vol. ii, p. 111.

## 4

## DOUBTFUL DISPOSITIONS

Philippus confitetur sabbato vespere cum intentione communicandi die proxima. Ista tamen nocte cum amicis familiariter conversando, de crimine secreto tertii cujusdam loquebatur. Postea vehementer dubitabat ne fortasse hoc faciendo peccatum lethale admisisset. Adhuc dubius proximo mane ad ecclesiam ivit cum intentione ante Missam suum dubium sacerdoti qui unicus ecclesiæ servivit confitendi. Quum vero ad ecclesiam pervenisset, ecce sacerdos jam Missam incoeperat. Noluit Philippus sacram Communionem omittere, nec habuit alium confessarium cui confiteri potuit. In tantis angustiis putavit se posse cum ceteris accedere ad sacram Communionem intra Missam, quod fecit. Proximo tamen sabbato scrupulis agitatus venit iterum ad confessionem, quod fecisset declarat, et rogat quid facere debuisset. Unde quæritur:

1. Quænam dispositiones animæ requirantur ad sacram Communionem?

2. Quomodo et de quibus intelligendum sit illud Tridentini "Quamprimum confiteatur" (Sess. XIII, c. 7)?

3. Quid ad casum?

### Solution

1. What dispositions of soul are required for Holy Communion?

The dispositions of soul required for Holy Communion are the state of grace and a good and upright intention.[1]

2. How and of whom is the precept of the Council of Trent to be understood: "Let him confess as soon as possible" (Sess. XIII, c. 7)?

This is a grave precept imposed by the Council on those priests who though conscious of mortal sin and sorry for it did not go to confession before saying Mass on account of not having a confessor to whom they could confess.[2]

3. The case. Philip was in doubt whether he was in the state of grace or not, because he was not sure that he had not committed a mortal sin of detraction since his last confession. As he was in doubt, he was not *conscious* of mortal sin, and only those who are conscious of mortal sin are bound to go to confession before Holy Communion. However, as the Eucharist is a sacrament of the living, and does not of itself certainly confer grace on a soul deprived of the supernatural life of God's grace, those who receive it are bound to have moral certainty of their freedom from mortal sin in order that the sacrament may be fruitful. Therefore, one who doubts whether he is in the state of grace, although he is not bound to go to confession, yet he is bound to elicit an act of contrition so that thereby he may make sure, morally speaking, of being in the state of grace. Philip, therefore, should have done this, though he did not sin in omitting it, because he was in good faith.

[1] Manual of Moral Theology, vol. ii, p. 106 ff.

[2] Ibid., p. 107.

## 5

## WAS CONFESSION OBLIGATORY

Caius in Anglia Missionarius Rector cum ancilla noctu peccavit. Proximo mane ad Missam celebrandam obligatus quum noluerit juveni sacerdoti curato confiteri quippe qui scandalum pateretur ac quæ esset complex suspicari posset, nec alius sacerdos intra tria millia passuum degeret, actu contritionis elicito Missam celebravit. Postea vero scrupulis angebatur quum cogitaret se confiteri curato quin mentionem ullam vel tantum aliqualem sub terminis generalibus peccati cum ancilla faceret, vel saltem sine gravi incommodo per *tramway* alium sacerdotem adire potuisse. Unde quæritur:

1. Qualis integritas in confessione requiratur et qua lege?
2. Num integritas confessionis sit procuranda etiam peccatum complicis manifestando?
3. Quænam obligatio sacerdoti incumbat qui mortali gravatus ex defectu confessarii cum sola contritione celebraverit?
4. Quid ad casum?

### Solution

1. What sort of integrity is required in confession and by what law?

By divine law formal integrity is required in confession, which consists in mentioning all the mortal sins which occur to the mind after a diligent examination of conscience and which have not previously been directly

absolved, or at least those mortal sins which the penitent is bound under the circumstances to confess.[1]

2. Is the integrity of confession to be procured by manifesting also the sin of one's accomplice?

If the penitent can not confess a sin without thereby making known his accomplice in the sin to his confessor, it is probable that he is not bound to confess that sin to this confessor. The contrary opinion that he is bound to confess it is also probable, so that he is free to do so if he choose.[2]

3. What obligation rests on a priest who because he had not a confessor merely made an act of contrition for a mortal sin and celebrated Mass?

He is bound to go to confession as soon as possible according to the decree of the Council of Trent (Sess. XIII, c. 7).

4. The case. Caius was not bound to go to confession so early in the morning to the neighboring priest. His going and inquiring for his confessor at so unusual a time could scarcely help creating suspicion and comment. If he had no other mortal sins on his conscience he was not bound to go to his curate; for the danger of causing him scandal and the probability that he would suspect who was the accomplice excused Caius from confessing this sin to him. If he had other mortal sins not yet confessed which he could confess to his curate without these inconveniences he would be bound to confess them before Mass. Otherwise if he has the grace to make a good act of contrition he will only be obliged to confess his sin as soon as possible, *i.e.*, within the next three days.

[1] Manual of Moral Theology, vol. ii, p. 164 f.

[2] Bucceroni, vol. ii, n. 720.

## 6

### NON-FASTING COMMUNION

Caius Missionarius Rector statuerat ipse Officia Majoris Hebdomadæ peragere, quum vero Feria VI in Parasceve male se habere senserit misit nuntium coadjutori ut illo die functiones sacras perageret. Renuntiabatur coadjutorem jam jentaculum sumpsisse, quo tamen nonobstante, Caius eum omnia Officia consueta perficere jussit. Quod quum theologus quidam audisset, dubitabat utrum licite esset factum. Unde quæritur:

1. Quo jure statuatur jejunium ante Sacram Communionem?

2. Num peccet qui statim post Communionem cibum sumat?

3. Quales exceptiones hujus legis admittantur?

4. Quid ad casum?

#### Solution

1. By what law is fasting prescribed before Holy Communion?

Although reverence for Holy Communion suggests that it should be received before any other food, still in strictness it is only the positive law of the Church which prescribes fasting before Holy Communion.

2. Is sin committed by taking food immediately after Holy Communion?

Reverence also suggests that other food should not be taken immediately after Holy Communion but, as there is no law on the point, sin is not committed by taking food immediately after Communion.

3. What exceptions to the law of fasting Communion are recognized?

Danger of death, danger of scandal or serious loss of reputation, danger of profanation of the Blessed Sacrament, long continued illness with incapacity to observe the fast, necessity of completing the Sacrifice of the Mass, and probably the necessity of consecrating the Viaticum for a dying person, are recognized as valid excuses for saying Mass and receiving Holy Communion though not fasting.[1]

4. The case. As Good Friday is not a day of obligation, and no law imposes a grave precept of saying the Mass of the Presanctified, Caius did wrong in bidding his curate who had taken his breakfast perform that function and consequently receive Holy Communion not fasting. The curate might perhaps have performed the first part of the service and omitted the Mass of the Presanctified, if a considerable number of people had come to church in expectation of the service.

[1] Manual of Moral Theology, vol. ii, p. 111.

## 7

## INTENTION TO CONSECRATE

Caius sacerdos dubius utrum cogitationi pravæ consensum præstitisset anxius celebrare Missam incoepit. Inter Missam celebrandam nunc se consensisse nunc aliter judicabat, et dubiis occupatus ministrum parvam hostiam pro communione quum in altari SS. Sacramentum non fuerit reservatum in corporali apposuisse non advertit. Post communionem sumptam et auditum *Confiteor* a ministro recitatum aspexit et parvam hostiam in corporali vidit. Quid faciendum primo nesciebat, sed mox recordatus se aliquot abhinc annis propositum efformasse consecrandi in Missa quidquid decenter consecrabile in altari esset appositum quamvis postea propositum oblitum nunquam renovasset pro communione hostiam ministro præbuit. Postea tamen dubiis cruciatus petiit a confessario utrum celebrando sine prævia confessione aut contritione peccasset, et utrum hostiam ministro dare debuisset. Unde quæritur:

1. Quid requiratur ad validam Eucharistiæ consecrationem?
2. Quomodo peccet sacerdos in mortali celebrans?
3. Quid ad casum?

### Solution

1. What is required for the valid consecration of the Eucharist?

The proper matter must be physically present and must be determined by the intention of the priest when he utters the words of consecration.[1]

2. How does a priest sin who celebrates in mortal sin?

He commits several mortal sins: by consecrating the Holy Eucharist in sin, by communicating in sin, and by administering Holy Communion to himself though he knows that he is unworthy to receive it.[2]

3. The case. Caius should have made up his conscience finally before saying Mass as to whether he had sinned or not. Frequently this can be done in such cases by means of presumptions. If more frequently than not he consents to such bad thoughts when attacked by them, he should presume that he consented in this doubtful case, and should go to confession. If he does not usually consent, the presumption is in his favor, and he may conclude that he did not consent in this doubtful case. If he can not make up his mind but remains in doubt he should at least elicit an act of contrition before saying Mass. He should not have given the host for Communion to his server, for it could hardly have been consecrated under the circumstances. An actual or at least virtual intention is required for the validity of the consecration. He had not an actual intention, for he had not noticed the small host until the communion. Nor had he a virtual intention, for the purpose which he had formed many years before

[1] Manual of Moral Theology, vol. ii, p. 84.
[2] Ibid., p. 33.

of consecrating whatever was capable of being consecrated with decency had not been renewed, and had been forgotten. It could not then continue to have an influence on the act of consecration, and some influence is required for a virtual intention. We must, then, conclude that the small host was not consecrated and it should not have been given for communion.

## 8

## DOUBTFUL CONSECRATION

Episcopus quidam ordinaverat duodecim neo-sacerdotes, at post ejus communionem animadversum est in credentia ad latus altaris ciborium quod hostias ad neo-sacerdotes communicandos continebat ex inadvertentia fuisse relictum. Dubitantem magistrum ceremoniarum quid esset faciendum monet unus suggerendum esse Episcopo ut hic et nunc consecret ciborium sub conditione et particulas consecratas distribuat; alter vero insinuat eas esse sine dubio jam consecratas vi intentionis virtualis ab Episcopo certe habitæ; tertius vero aliquem ex neo-sacerdotibus debere super ciborium verba consecrationis proferrre ut certo sit consecratum; quartus denique totidem hostias ex tabernaculo esse extrahendas ut neo-sacerdotes Missam a singulis simul cum Episcopo celebratam integrarent. Unde quæritur.

1. Quid requiratur ad validam in Missa consecrationem?
2. Quid ad licitam consecrationem?
3. Quid in casu ab Episcopo faciendum, et quid de variis mediis magistro ceremoniarum suggestis?

### Solution

The first question was answered above, p. 129.

2. What is required for the lawful consecration of the Eucharist?

For the lawful consecration of the matter of the Eucharist the hosts must be whole, clean, and of the usual size and shape, the chalice and ciborium must be on the corporal and uncovered, and the consecration must be in Mass as it is prescribed to be said, and under both kinds.[1]

3. The case. The first suggestion is altogether inadmissible, if followed it would mean that the bishop was to say Mass again without following the order prescribed by the Church, and was to consecrate under one species alone.

The bishop could hardly have had an intention to consecrate the ciborium according to the second suggestion, for if he had thought of it at all he would have noticed that it was not on the altar. It is true that it might have been validly consecrated on the credence table, but unless the bishop actually intended to do it this should not be assumed.

The third suggestion has all the inconveniences of the first, for the newly ordained priests celebrate Mass with the bishop.

The reason given for the fourth suggestion is incorrect, for the hosts in the tabernacle were consecrated in another Mass and can not be used to integrate this Mass. However, this suggestion seems to be the best, for thus the new priests can at any rate receive Holy Communion, though the hosts were not consecrated in this Mass as they should have been.

[1] Manual of Moral Theology, vol. ii, p. 85.

## 9

## MASS FOR A NON-CATHOLIC

Caius vetus in Anglia Missionarius recenter pro Regina demortua preces privatas quidem ad Deum fudit, sed aliud facere piaculum fore existimavit. Non igitur sine admiratione audivit in ecclesia catholica vicina servitium vespertinum in memoriam, ut dicitur, cum speciali sermone fuisse habitum, in alia Missam fuisse privatim applicatam ut sacerdos ibi postea publice proclamavit, in alia Missam de Requiem publice pro anima defunctæ fuisse celebratam. Mirabundus igitur Caius theologum consuluit quid de prædictis sit censendum. Unde quæritur:

1. Num lege divina vel naturali sit prohibitum quominus preces publice vel privatim fundantur, vel Missa applicetur, pro quibuscumque?

2. Quid prohibeatur in hac materia lege ecclesiastica?

3. Quid ad casum?

### Solution

1. Is it forbidden by divine or natural law to pray publicly or privately or to apply Mass for any one?

Apart from scandal or other extrinsic reasons we are not forbidden by divine or natural law to pray or to offer Mass for any one whom it will benefit. It is useless to pray or to offer Mass for the damned.

2. What is forbidden in this matter by ecclesiastical law?

The Church by her sentence deprives excommunicated persons of a share in the public suffrages offered by her ministers in her name. All acknowledge that by this law it is forbidden to pray or offer Mass publicly for those who are to be avoided as excommunicates. Some hold that it does not prohibit public prayer for those excommunicates who are tolerated. Some think that it is a law which has force only in the external forum, and that privately we may offer Mass for all whom it will benefit, as we may and certainly should pray for all men privately.[1]

3. The case. The wonder felt by Caius at an evening memorial service with sermon being held in a Catholic Church for one who had died out of her communion, was not without grounds. Such a thing savors of heterodoxy, not of Catholicism, which does not allow such things to be introduced into her public worship by private authority. If the priest who said Mass privately for the dead Queen had kept it to himself, nothing could have been said against him, but when he announced publicly that he had done it, it was much the same as if he had publicly announced beforehand that he was going to do it, and this is not tolerated by the usage of the Church. The Requiem Mass publicly offered for the dead Queen was contrary to the practice of the Church, which we should follow in all things, and against the express declaration of Gregory XVI, 16 Feb. 1842: "Veteri ac nova disciplina interdictum est ne homines in externa notoriaque heresum professione defuncti Catholicis ritibus honorentur."

[1] Manual of Moral Theology, vol. ii, p. 116.

## 10

## STIPENDS FOR MASS

Caius sacerdos missionarius in Anglia dum exercitiis spiritualibus vacat scrupulis angitur de obligatione ratione stipendii Missæ celebrandæ. Pergit igitur ad confessarium cui narrat se plures Missas pro stipendio celebrandas solere accipere quam quibus satisfacere possit. Non vult tamen stipendia alteri sacerdoti tradere unde aliquando retinet stipendium at non celebrat Missam quod ob parvam quantitatem, non enim excedit duos shillingos cum dimidio, sperat non esse mortale. Aliquando etiam Missæ celebrationem ex stipendio debitæ differt ad quatuor vel sex menses, imo si agatur de stipendiis traditis a pia associatione quadam ad devotionem erga animas in purgatorio promovendam instituta pro animabus defunctorum in genere, sine scrupulo ultra sex menses debitam celebrationem Missæ differt. Unde quæritur:

1. Unde oriatur obligatio Missæ celebrandæ ratione stipendii accepti, et num sit obligatio gravis?

2. Intra quod tempus sit Missa ratione stipendii celebranda?

3. Quid ad casum?

### Solution

1. Whence arises the obligation of saying Mass by reason of accepting a stipend, and is the obligation a grave one?

The obligation of saying Mass for the intention of the person who has given a stipend arises from a contract which the priest enters into with the giver, and from ecclesiastical law. It is not a contract of buying and selling, but an innominate contract—*Do ut facias.* The stipend is given for the support of the priest, and the priest undertakes to apply Mass for the intention of the giver. The obligation is a grave one of justice, as the nature of the obligation, the intention of the parties, and the law of the Church make manifest. Innocent XII commanded that "absolute tot Missæ celebrentur quot præscriptæ fuerint ab offerentibus eleemosynas."

2. Within what time is Mass to be said for which a stipend has been given?

The decree S. C. C. *Ut debita,* 11th May 1904, answers this question:

"Utile tempus ad manualium Missarum obligationes implendas esse mensem pro Missa una, semestre pro centum Missis, et aliud longius vel brevius temporis spatium plus minusve juxta majorem vel minorem numerum Missarum."

3. The case. In accepting more stipends for Masses than he can satisfy Caius transgressed the decree S. C. C., *Ut debita,* which prescribes:

"Nemini licere tot Missas assumere quibus intra annum a die susceptæ obligationis satisfacere probabiliter ipse nequeat." In neglecting to celebrate Mass although bound to do so on account of having received a stipend for it Caius committed grave sin, and he is bound to restore the stipend to the giver if the occasion on account of which the Mass was asked for has now passed by, or otherwise to say the Mass as soon as possible. If he can

not do this, he should hand over the stipends to his Ordinary, or to some reliable priest of the diocese. In deferring the celebration of Mass for which he has accepted a stipend much beyond a month he has committed so many greivous sins.

## 11

### FUNDED MASSES

Caius Catholicus testamento reliquit ædes suas Titio sacerdoti Missionario in Anglia ea conditione ut in perpetuum viginti Missæ singulis annis pro requie animæ suæ celebrarentur. Redditus annui ex ædibus provenientes tunc facile viginti libras sterlinas superabant, unde legatum libenter Titius accepit. Intra paucos vero annos ob dilapidationem ædium et quia vicinitas minus evasit honesta, vix decimam partem prioris summæ singulis annis accepit mœrens Titius, unde numerum Missarum ad octo reduxit, ita ut remaneret una pro quinque shillingis taxa diœcesana; immo aliquas misit celebrandas ad amicum Lucium qui libenter dimidiam coronam pro singulis Missis accepit. Unde quæritur:

1. Quid sint Missæ manuales et fundatæ?
2. Ad quem spectet accipere et reducere onera Missarum?
3. Num liceat transferre onus Missæ celebrandæ alteri, parte stipendii retenta?
4. Quid ad casum?

#### Solution

1. What are manual and funded Masses?

The distinction is explained in the decree S. C. C., *Ut debita*, May 11, 1904: " Declarat S. Cong. manuales Missas præsenti decreto intelligi et haberi eas omnes quas fideles

oblata manuali stipe celebrari postulant, cuilibet vel quomodocumque sive brevi manu sive in testamentis hanc stipem tradant, dummodo perpetuam fundationem non constituant, vel talem ac tam diuturnam ut tanquam perpetua haberi debeat."

2. To whom does it belong to accept and to reduce the burden of Masses?

The Fourth Council of Westminster (d. X n. 11 says): "Meminerint ecclesiarum cleri sæcularis rectores soli Episcopo competere jus onera Missarum sive sint temporalia sive perpetua ecclesiis imponendi; et onera jam imposita nec mutari nec minui posse inconsulta Sancta Sede." The consent of the bishop (or of the regular prelate for Religious) is not required for the validity, but only for the lawfulness of the transaction.[1]

3. Is it lawful to transfer the burden of saying Mass to another while retaining part of the stipend?

No, as a general rule. The decree *Ut debita* says: "Decernitur stipem a fidelibus assignatam nunquam separari posse a Missæ celebratione, neque in alias res commutari aut imminui sed celebranti ex integro et in specie sua esse tradendam." In certain cases, however, it is not unlawful to retain part of the stipend, as, for example, when more than the ordinary sum has been given out of friendship, or other special reason, when the priest who says the Mass without being asked voluntarily foregoes part of the stipend, or when there is question not of manual but of funded Masses in the strict sense annexed to a church.[2]

4. The case. Titius went beyond his powers when he

[1] Gasparri, De Eucharistia, vol. i, n. 561.

[2] Lehmkuhl, vol. ii, n. 281, 11th edition.

accepted the legacy without the consent of the bishop, as is clear from what was said above. Titius still further exceeded his authority when he reduced the number of Masses to be said on account of the reduction of income from the property. He should have recourse to the Holy See, say what he has done, and ask what he is to do in the matter in future. Under the circumstances he did not do wrong in getting his friend Lucius to say some of the Masses for half-a-crown, which is commonly given as a stipend for Mass by the poor in England. No definite sum had been apportioned by the testator for the celebration of each Mass.

## 12

## TRADING IN MASSES

Caius sacerdos scripsit ad Titium pariter sacerdotem et auctorem libri theologici ac petiit ut exemplar dicti libri ad se mitteretur. Auctor librum misit et simul scripsit optimum modum solvendi pretium fore ut Caius quinque Missas celebraret, se enim habere plures intentiones quam quibus satisfacere possit, et istas quinque jam in manibus esse a duobus mensibus. Caius vero dubitat utrum sibi liceat ita librum emere, immo Titium contra decretum S. C. C. Maii 11, 1904, deliquisse putat. Unde quæritur:

1. Quomodo monstretur esse licitum ac honestum stipendia pro Missis accipere?

2. Quid S. C. C. statuerit Maii 11, 1904, de dubiis in casu tractandis?

3. Quid ad casum?

### Solution

1. How is it shown that it is lawful to receive stipends or Masses?

The Mass is not sold for the stipend, but the priest undertakes to say a Mass for the intention of the person who asks for it. But it is only right and proper that one who occupies himself for the benefit of another, should receive his support or part of it from him for whose benefit

he labors. A soldier fighting or training to do so for his country's defence has a right to be supported meanwhile at his country's expense. In the same way the stipend is given to the priest for his support by one who benefits spiritually by the priest's celebration of Mass.

2. What did the S. C. C. decree May 11, 1904, bearing on the points in the case?

The decree S. C. C., *Ut debita*, contains the following: "Eleemosynam Missæ numquam separari posse a Missæ celebratione, neque in alias res commutari aut imminui, sed celebranti ex integro et in specie sua esse tradendam;" porro, "libros, sacra utensilia vel quaslibet alias res vendere aut emere et associationes (ut vocant) cum diariis et ephemeridibus inire ope Missarum nefas esse atque omnino prohiberi. Hoc autem valere non modo si agatur de Missis celebrandis, sed etiam de celebratis, quoties id in usum et habitudinem cedat et in subsidium alicujus commercii vergat."

3. The case. Caius would seem to have interpreted the decree too strictly The decree indeed, forbids trading with stipends for Masses, and as a general rule prescribes that the whole stipend received for a Mass is to go to the priest who says the Mass. It is specially forbidden for booksellers to collect intentions for Masses and get them said by priests who receive books instead of the stipends. However, Titius did none of these things. He had some Masses to be said for stipends, and he was at liberty to ask Caius, if he knew him to be an honest priest, to say some of those Masses. Caius was indebted to Titius for the price of the book. It was lawful to square accounts without the necessity of sending money backwards and forwards. Fr. Lehmkuhl says: "Solum si [sacerdos]

superflua stipendia non de industria collecta habet autque Missas celebrandas cum jure ad integra stipendia aliis sacerdotibus committit, hi vero aliunde permoti ab illo folia periodica emunt, licebit computum dati et accepti facere."[1]

[1] Casus Conscientiæ, vol. ii, n. 223.

## 13

## MASS IN A PRIVATE ROOM

Caius recenter ordinatus sacerdos multum desiderat missam præsente patre celebrare. Pater tamen valde senex est, nec unquam e lectulo surgit, unde erit necessarium ut Caius in patris cubiculo privato celebret si quod desiderat effectum sortiatur. Vult igitur scire quid ut desiderium impleatur sit faciendum. Unde quæritur:

1. Quonam loco sit Missa celebranda?
2. Num Episcopus licentiam celebrandi in cubiculo privato dare possit?
3. Quid ad casum?

### Solution

1. In what place should Mass be celebrated?

By ecclesiastical law Mass may regularly be said only in churches and in oratories dedicated solely to the service of God and therein on duly consecrated altars. The Council of Trent forbade bishops to allow priests to say Mass in private houses, though bishops have the personal privilege of saying Mass on a portable altar in private houses in which they may be staying. In the United States bishops commonly have a privilege granted by the Holy See of allowing priests to say Mass in any decent place, but they are told to do this only once in a way, and on account of

special circumstances. The superiors of some regular Orders have a similar privilege.[1]

2. Can a bishop give leave to celebrate Mass in a private room?

As has just been said he can not by his ordinary powers. If he has the special privilege granted by the Holy See of which mention has just been made, he may grant permission once in a way on account of special reasons.

3. The case. It is clear from what has been said that Caius can not say Mass in his father's room without special leave from the Holy See, or from the bishop, or regular superior in case Caius is a Religious, if they have the special privilege of allowing such an act. The occasion and the circumstances would seem to justify the exercise of such a special privilege, if the bishop or regular superior think proper to indulge the very filial desire of Caius.

[1] Manual of Moral Theology, vol. ii, 130.

## 14

## MASSES FOR THE DEAD

Caius sacerdos cujusdam ordinis religiosi audit Julium ejusdem ordinis socium recenter esse mortuum et ipso die esse sepeliendum. Dies proximus est ritus duplicis quo si per leges ecclesiasticas sit licitum, vellent Caius et alii socii sacerdotes qui eidem ecclesiæ inserviunt Missam de Requie pro anima Julii celebrare. Rogat igitur Caius utrum hoc sit licitum vel decreto Maii 19, 1896, vel decreto S. R. C. Dec. 11, 1897, quo mutatur Rubrica Missalis De Missis Defunctorum, n. 2, in hunc modum; loco verborum—"præterquam in Festis duplicibus et Dominicis diebus"—leguntur sequentia:

"Missæ privatæ pro Defunctis ut in die obitus seu depositionis etiam in duplicibus celebrari possunt præsente, insepulto, vel etiam sepulto non ultra biduum cadavere; exceptis duplicibus primæ classis, diebus duplicia primæ classis excludentibus, et Festis de præcepto." Unde quæritur:

1. Quandonam permittitur et prohibetur Missa exequialis?

2. Quandonam permittitur et prohibetur Missa privata pro Defunctis?

3. Quid ad casum?

SOLUTION

1. On what days may a solemn or sung Mass for the dead be said?

Præsente corpore celebrari potest omni die, dum tamen Missa conventualis, ubi obligat, aut parochialis, si sit dies dominica aut festiva, et officia divina non impediantur, magnaque diei celebritas non obstet.[1]

A list of the days on which according to this rule solemn or sung Mass for the dead is forbidden is usually given in the Ordo.

2. When may a private Mass for the dead be said?

Prohibetur omnibus diebus dominicis et duplicibus; diebus infra octavas Epiphaniæ, Paschatis, Pentecostes, SS. Corporis Christi, et Nativitatis Domini, feria quarta Cinerum, tota Hebdomada sancta, vigiliis Epiphaniæ, Pentecostes, et Nativitatis Domini; tempore expositionis SS. Sacramenti ob causam privatam, ad altare expositionis tantum; quando autem exponitur ob causam publicam, ad omnia altaria ecclesiæ; diebus stationis ecclesiæ vel alterius solemnitatis. Omnibus reliquis diebus Missa privata de Requie permittitur.[2]

Moreover, Juxta decretum S. R. C. Maii 19, 1896 in quolibet sacello sepulcreti, rite erecto vel erigendo, Missæ quæ inibi celebrari permittuntur, possunt esse de Requie diebus non impeditis a Festo duplici 1 vel 2 classis, a dominicis, aliisque Festis de præcepto servandis, necnon a Feriis Vigiliis Octavisque privilegiatis. Ibid. n. 64. And, "Pro paupere defuncto cujus familia impar est solvendi expensas Missæ exequialis, cum cantu, hæc Missa legi

[1] De Herdt, Sacræ lit. Praxis, n. 56.

[2] De Herdt, n. 63.

potest sub eisdem clausulis et conditionibus quibus Missa cum cantu conceditur, dummodo in dominicis aliisque Festis de præcepto non omittatur Missa officio dici currentis respondens.

"In ecclesia vel oratorio tum publico tum privato et in Sacellis ad Seminaria, Collegia, ac Religiosas vel pias utriusque sexus Communitates spectantibus, ea die qua ibi fit funus cum Missa solemni exequiali, toto tempore quo defuncti corpus physice aut moraliter præsens est, permittuntur Missæ privatæ de Requie modo applicentur pro ipso defuncto; exceptis sequentibus diebus: omnibus dominicis; omnibus Festis duplicibus 1 classis: Feriis privilegiatis IV Cinerum et II, III, IV Sanctæ Hebdomadæ; Vigiliis Nativitatis Domini et Pentecostes; diebus octavis Nativitatis Domini et Epiphaniæ." [1]

3. The case. Caius may have one solemn or sung Mass *de Requie* on the day mentioned, as De Herdt says, n. 58. Private Masses *de Requie* are forbidden, as the body of Julius is not present either physically or morally. If the body of Julius were present all the priests might say a private Mass *de Requie* for the repose of his soul, but if they were said in a church or public oratory they should be said on the day when a solemn or sung Mass was said for the funeral.

[1] De Herdt, n. 57.

## 15

## ALTAR FURNITURE

Caius sacerdos curam gerebat alicujus missionis in Anglia. Quam missionem quum Episcopus visitaret aliqua legibus ecclesiasticis minus congruentia, ut ipsi videbatur, invenit. Inter alia enim casula fili serici flavi coloris ad Missam adhibebatur; aliæ casulæ ex serico cum cottone mixto exterius, interius vero ex alpaca conficiebantur; lux electrica tabernaculo hinc inde adhærebat, et ad lumen dandum inserviebat; calix Missæ inserviens celebrandæ nomen dantis circa pedem insculptum gerebat cum inscriptione *Ora pro felici statu N.* addita. Episcopus edicto visitationis præscripsit hæc esse juxta rubricas reformanda, nisi probatos auctores qui ea permitterent allegare posset Caius. Unde Caius quærit:

1. Ex qua materia sint casulæ conficiendæ?
2. Num color vestium pro Missa sit sub peccato servandus?
3. Quid de luminibus altaris sit præscriptum?
4. Quid ad casum?

### Solution

1. Of what material should the chasuble be made?

Chasubles should be of silk, or silver or gold cloth, although the cross and other ornaments on them may be of linen, wool, or cotton.[1]

[1] Gasparri, De SS. Eucharistia, n. 692.

2. Is the color of the vestments a matter of precept?

Yes, of light precept, according to St. Alphonsus, VI, 378.

3. What is prescribed about the lights of the altar?

There should be two wax lights, or more according to the quality of the Mass, on the altar while Mass is being said. Besides these, no lights should be placed on the altar, though nothing prevents lamps, gas, or the electric light, from being used in the church to give light; but any theatrical effect should be avoided.[1]

4. The case. Yellow vestments have often been forbidden and they should not be used.[2]

Chasubles of silk mixed with cotton should not be used; unless the cotton appears only in the ornaments and accessories. The Sacred Congregation of Rites answered (23 March, 1882) that lining of cotton or linen or wool, and we may add alpaca, for silk chasubles could be tolerated in poor churches.

The electric light on the tabernacle is forbidden (S. R. C. 13 April, 1883).

There is nothing reprehensible in the inscription on the chalice.[3]

[1] Génicot, Theol. Moral. Institutiones, vol. ii, p. 246.

[2] Gasparri, De SS. Eucharistia, n. 693.

[3] Ibid., n. 749.

# PENANCE

## 1

## DOUBTFUL MATTER

Titius annos viginti natus conversus ad fidem Catholicam et sub conditione baptizatus propter dubium de priore baptismo in ecclesia anglicana recepto, sanctissimam vitam instituere incepit. Sabbatis singul s confitebatur at quia plerumque nonnisi eadem levia peccata habebat, aliquod peccatum grave a se adhuc protestantico commissum adjungebat; imo semel ex quadam verecund'a propter eadem semper repetita simpliciter dixit "Aliqua levia peccata commisi et peto absolutionem." Confes ariu vero dubitat utrum talis confessio sufficiat ad valid tatem sacramenti, quod dubium deinde extenditur ad illud peccatum vitæ præteritæ quod Titius adjungere solebat Unde quæritur:

1. Quænam sit materia sacramenti pœnitentiæ?
2. Num materia valida sit eadem licita?
3. Num liceat absolutionem dare quando materia sit dubia?
4. Quid ad casum?

### Solution

1. What is the matter o the sacrament of Penance?

The remote matter of Penance are the sins which the penitent has committed after Baptism. Mortal sins are

necessary matter inasmuch as each and all must be confessed; venial sins and mortal sins which have been confessed and absolved before, are free matter and sufficient for absolution. According to the common opinion, the proximate matter of Penance are the acts of contrition, confession, and satisfaction, performed by the penitent.[1]

2. Is matter which is valid also lawful?

The question is disputed. The difficulty arises about the sufficiency of confession in general terms, when the penitent has no necessary matter. May a penitent be absolved if he says simply: "I accuse myself of some light faults." Absolution in such a case is valid, and some divines say that it is also lawful, as there is no precept which binds the penitent to say more about matter which he is free to confess or not. Other divines say that if such a penitent chooses to confess light matter, he is bound to particularize it, so that the confessor may be able to pass judgment on it, and the opposite opinion would lead to abuse.[2]

3. Is it allowable to give absolution when the matter is doubtful?

No, it is not generally lawful. The priest as minister of the sacrament is bound to procure certain matter as far as he can; otherwise the sacrament is exposed to the danger of nullity. Sometimes, as when the penitent is in danger of death, and certain matter can not be procured, the confessor may give conditional absolution.[3]

4. The case. Titius, a convert from Protestantism, used to mention a grave sin of his past life when he went

[1] Manual of Moral Theology, vol. ii, 148 ff.
[2] Ibid., 150.
[3] Ibid., 153.

to confession, to make sure of sufficient matter. As the sin was committed by him while he was a Protestant and only probably baptized, it is only doubtful matter of penance, and the mentioning of it is useless for Titius' purpose. He also confessed some venial sins under the general formula: "I have committed some venial sins and ask for absolution.' Although theoretically there is ground for saying that such a confession is valid and lawful, yet it is against the practice of the Church, is liable to lead to abuse, and should not be used nor ordinarily allowed by confessors.

## 2

## A CONVERT'S CONFESSION

Albertus anglicanus in Ecclesiam Romæ fuit receptus a quodam sacerdote Romano qui ab eo utpote dubie baptisato in secta anglicana confessionem integram non exegit. Reversus in patriam Albertus illud narrabat Titio parocho et confessario qui exinde scrupulis angebatur. Legerat enim apud auctorem recentem quæstionem de confessione dubie baptisatorum integra exigenda quando in Ecclesiam recipiantur esse practice solutam, et nunc constare a talibus confessionem integram esse jure divino faciendam. Quæ sententia si sit vera, Albertus jure divino obligatione cui nondum satisfecit teneri videtur. Vult igitur scire Titius utrum eum de hac obligatione monere debeat. Unde quæritur:

1. Quænam sit materia sacramenti Pœnitentiæ?

2. Quid facere debeat confessarius qui neo-conversum in Ecclesiam recipiat?

3. Quænam præcipua documenta de confessione in tali casu exigenda promanarint?

4. Quid ad casum?

### Solution

The first question is answered above, p. 151.

2. What ought a priest to do when he receives a convert into the Church?

He must first of all see to his instruction in the Catholic faith, and then inquire about his Baptism. If the convert was never baptized, he is only required to make a profession of faith. If he has been validly baptized, besides a profession of faith he must be absolved from censures, and then be absolved in confession from his sins. If there be a doubt about his Baptism, he must make a profession of faith and be baptized conditionally, in England with holy water in secret without the ceremonies. He must, furthermore, make a full confession of all the mortal sins of his life, and receive conditional absolution from them. In some dioceses leave from the bishop is required to receive a convert.[1]

3. What are the chief documents that have been issued about requiring a full confession in such a case?

The following: I Westmon. d. XI, n. 8; S. O. 17 Junii 1715, 17 Dec. 1868, 20 Julii 1859; S. C. de P. F. 12 Julii 1869; Tanquerey, De Pœnit. n. 133; Collectanea S. C. de P. F.

4. The case. Albert, an Anglican doubtfully baptized, was received into the Church by a priest in Rome who did not require him to make a full confession of his life. When Albert returned to England, he told this to Titius, his parish priest, who was in doubt whether a full confession was not still obligatory by divine law.

According to the principles laid down by some theologians (*v.g.* Lehmkuhl, Casus, II, n. 288; Tanquerey, De Pœnit. n. 34,) Albert would seem still to be under the obligation of making a full confession. It is advisable that he should do so, but the strict obligation is difficult to prove. The arguments adduced to prove it are not conclusive. The Cardinal Prefect of Propaganda indeed

[1] Form for the Reception of a Convert, C. T. S., 1901.

did declare July 10, 1869, that the answer of the Holy Office Dec. 17, 1868, "contained a universal law," but a private assertion made by a Prefect of Propaganda could not make it a universal law if it was not one already. No universal legislative authority has ever made such a law. Nor is there a presumption of law with regard to the matter in hand. There is such a presumption with regard to a question of the validity of marriage. It is a well-recognized rule of law that doubtful Baptism is presumed valid in questions concerning the validity of subsequent marriage, but this presumption of law must not be transferred to quite another matter such as this is. And if it be said that the Church has jurisdiction over those who are doubtfully baptized, this has to be proved. If in fact the person is not baptized, the Church has no jurisdiction over him: "For what have I to do to judge them that are without?" (1 Cor. v. 12).[1] It seems still to be probable that a full confession is only necessary by positive law, and in places where such positive law binds, as in Great Britain and in the United States of America. But as Albert was received in Rome where there is no positive law on the point, he need not be required to make a full confession after his return to England.

[1] Cf. Wernz, Jus Decretalium, iv, n. 508.

## 3

## AN ANXIOUS PENITENT

Catharina, anxietatibus vexata, suam conscientiam confessario aperit. Dicit se velle quidem non offendisse Deum, sed non dolere de peccatis, aut saltem multo minus de eis dolere quam de malis temporalibus. Porro affirmat se certam esse iterum se lapsuram in eadem peccata, statim vel inter paucos dies post confessionem; ac denique nisi timor inferni obstaret, se formidari ne Dei famulatum desereret, et vitiis indulgeret, quum nihil propter amorem Dei faciat. Hinc putat se nullo modo esse dispositam ad absolutionem sacramentalem accipiendam. Unde quæritur:

1. Quid requiratur ex parte pœnitentis ad validitatem sacramenti Pœnitentiæ?

2. Quid significet apud theologos illud: Dolorem debere esse summum?

3. Quid ad casum?

### Solution

1. What is required for the validity of the sacrament of Penance on the part of the penitent?

For the validity of Penance the penitent must make a formally integral confession of all the mortal sins which he has committed after Baptism and which have not been directly absolved, and he must have true and supernatural sorrow for them.

2. What do theologians mean when they say that sorrow for sin must be supreme?

They mean that the sinner must regard sin as the greatest of all evils, and that he must be prepared to do and to suffer anything rather than commit sin again.[1]

3. The case. Catherine tells her confessor that she wishes that she had not offended God, but that she has no sorrow for her sins, or at least much less sorrow for them than for temporal evils. Catherine probably means that she does not *feel* sorrow for her sins, as she does for temporal evils. She should be told that the sorrow required in Penance is in the will, and she should be asked whether she proposes to avoid sin in future, with God's grace, come what may. If she says Yes, she shows she has sorrow for her sins. Catherine further says that she is certain that she will fall into sin again immediately, or at least within a few days after confession. She should be asked whether here and now she proposes to avoid the proximate occasions of sin and to do her best not to fall into it again. If she again says Yes, she should be encouraged to trust in God's help and be absolved.

She says she does nothing out of love for God, and that she fears that she would commit sin if it were not for the fear of hell. Catherine should be told not to torment herself by such idle suppositions; it is enough if through fear of God's punishments she observes His commandments and avoids sin. She thus fulfils the precept of love substantially: "He that hath My commandments, and keepeth them, he it is that loveth Me" (John xiv. 21). Of course it will be well for Catherine to exercise herself in special acts of the love of God, in which we can always advance.

[1] Manual of Moral Theology, vol. ii, p. 156.

## 4

## NO SORROW FOR WHAT SHE HAS DONE

Anna quæ recenter matrimonium cum Titio Protestántico in ecclesia Protestantica contraxit eo quod non potuit ab Episcopo obtinere dispensationem pro matrimonio mixto, venit ad confitendum Caio sacerdoti in Anglia missionario. De aliis peccatis Anna declarat se ex animo dolere, de matrimonio autem clandestino se nullatenus dolere, nec posse, quia tam ardenter maritum amet et de conjugio gaudeat. Caius proponit varia motiva doloris, nempe Deum tam bonum offendi matrimonio cum hæreticis, graves leges ecclesiasticas spretas, scandalum fidelium, et tandem cum lacrimis Anna profitetur se dolere de modo quo matrimonium fuerit celebratum, de ipso matrimonio nec posse nec velle dolere, quinimmo in iisdem circumstantiis se idem iterum esse facturam. Caius vero quamvis habeat facultates ab episcopo acceptas ad matrimonium convalidandum dubitat utrum sit Anna satis disposita ad absolutionem accipiendam. Unde quæritur:

1. Qualis dolor in sacramento Pœnitentiæ requiratur?
2. Quale propositum emendationis futuræ?
3. Quid a Caio faciendum?

### Solution

1. What sort of sorrow is required in the sacrament of Penance?

The sorrow must be true and sincere, supernatural or rooted in faith, universal or it must embrace all the mortal sins that are to be forgiven, and it must be supreme, or the sinner must detest sin more than any other evil, and he must be prepared to do and suffer anything rather than sin again.[1]

2. What sort of purpose of amendment is required?

The purpose of amendment must be sincere, efficacious, or the sinner must be prepared to take the means necessary to avoid sin in the future, and it must be universal, or extend to all mortal sins at least.[2]

3. The case. Ann had married a Protestant in the Protestant Church and when she came to confession to Caius, she said she could not be sorry for what she had done; indeed she said she would do the same again in the same circumstances. Caius got her to see the malice of her action, and then she said she was sorry for the way in which she had married, but could not feel sorry for the marriage. It is not necessary that she should be sorry that she has the man she loves for her reputed husband, and as far as the past is concerned, it is enough that she is sorry for the way in which she was married against the Church's laws. But she is still ill disposed for absolution, inasmuch as she says she would do the same again under the same circumstances. Caius must try to put her in better dispositions. In order to do this he may tell her that it will be better not to think of what she would do under the same circumstances, as she will never again be placed in the same circumstances. If she can be got to be really sorry for what was wrong in her action, and

[1] Manual of Moral Theology, vol. ii, 156.

[2] Ibid., 161.

to hope that God would give her grace never to yield again, and that she would do all on her side to co-operate with the grace of God, she might be absolved, and then the marriage could be put right. For this it will now be requisite that the parties should contract marriage in the ordinary way before the parish priest or his delegate and two witnesses.

## 5

## WAS HE PREPARED?

Titius bene instructus Catholicus actum contritionis elicere solet antequam cubitum it. Quodam sabbato ecclesiam intrat ut confiteatur, vix autem erat genuflexus ad se præparandum cum exiit quidam e confessionali, nec ullus inter turbam quæ expectabat statim est ingressus. Quum Titius bene sciat se unum grave peccatum ab ultima confessione patrasse, et hoc solum præter aliqua venialia conscientiam mordere, occasionem nactus sine speciali præparatione in confessionale ingressus, sua peccata confitetur et absolutionem accipit. Postea tamen dubitat utrum habuerit dolorem sufficientem qui debeat partem sacramenti constituere et esse elicitus in ordine ad sacramentum suscipiendum. Unde postea confessarium interrogat qui proinde quærit:

1. Quando dolor elici debeat ut sufficiat ad sacramentum Pœnitentiæ?

2. Num dolor requisitus elici debeat ex intentione sacramenti suscipiendi?

3. Quid ad casum?

### Solution

1. When ought the act of sorrow to be elicited in order that it may suffice for the sacrament of Penance?

As sin can not be forgiven unless the sinner is sorry for

it, the act of sorrow must be elicited before absolution is given, or at least it must exist when absolution is given.[1]

2. Ought the act of sorrow to proceed from the intention of receiving the sacrament?

Some theologians hold that it should do so, just as the washing with water in Baptism should be ordained to the confection of the sacrament of Baptism. However, it seems safe to say with others that the subsequent referring of the act of sorrow to the confection of the sacrament which necessarily takes place when the penitent confesses his sins with sorrow in order to receive absolution is sufficient. Or, that the intention of confessing the sin which is present in the mind with the act of sorrow, is sufficient to refer the latter to the confection of the sacrament.[2]

3. The case. As is plain from the answer given above, there is no ground why Titius should be disturbed about the sufficiency of his sorrow. It is indeed advisable to make special and immed ate preparation for confession, and Titius should not repeat the action which gave rise to his scruples. Still there was nothing essentially defective in his confession. It was formally integral, and the acts of contrition which he made every night before going to bed made him habitually contrite, and they were made sufficiently sensible and referred to the sacrament by his confession. For, of course, he had always intended to confess his sins when he made his acts of contrition.

[1] Manual of Moral Theology, vol. ii, 157.
[2] Ibid., 157.

## 6

## PROBABLE OPINIONS IN PENANCE

Caius, qui studio theologiæ moralis operam navat, difficultatibus premitur quoad delectum opinionum in materia sacramenti Pœnitentiæ. Probabilismi enim ardens sectator in aliis materiis, colligit ex omnium doctorum consensu non licere uti opinione probabili relicta tutiori quando agatur de valore sacramenti. Attamen auctores probati passim in materia de pœnitentia supponere videntur licere in hoc sacramento uti opinione probabili. Nam afferunt sententias probabiles—attritionem supernaturalem ex metu pœnarum temporalium sufficere, circumstantias aggravantes non esse necessariam confessionis materiam, nec peccata dubia, et alias hujusmodi juxta quas pœnitentem agere posse concedere videntur: in quibus tamen evidenter de valore sacramenti agitur. Ad quas difficultates solvendas quærit:

1. Quare non liceat uti opinione probabili quando agatur de valore sacramenti?

2. Quando de facto agatur de valore sacramenti pœnitentiæ?

3. Quid de difficultatibus Caii?

### Solution

1. Why is it not lawful to use a probable opinion when there is question of the validity of a sacrament?

When there is only a probability that a sacrament will be valid it is also probable that it will be invalid, and so it remains doubtful whether the sacrament will be validly administered. To perform a sacred rite instituted by Christ except in case of necessity with a probability that it has not all the requisites for validity is grossly wanting in reverence to Jesus Christ, who instituted it, and it is contrary to justice and charity for a minister of the sacraments to expose the faithful to the danger of not receiving a valid sacrament to which they have a right.[1]

2. When in fact is there question of the validity of Penance?

There will be question of the validity of Penance when it is not certain that all the essential elements of the sacrament are present in the particular case. The essential elements of Penance are contrition, and formally integral confession on the part of the penitent, and on the other part, absolution given by a priest who has faculties. Sometimes when the priest has only probable jurisdiction the Church can supply and does so. Otherwise in this and in the other essential elements it will be unlawful to use only probable opinions about the validity of the sacrament except in case of necessity, when for the sake of the recipient's salvation it is better to administer a sacrament that is only probably valid, rather than not administer it at all.

3. What about the difficulties of Caius?

Although there have been controversies as to whether attrition for sin on account of the punishments which God inflicts on the sinner in this life is sufficient as a disposition for absolution, these controversies are now practically

[1] Manual of Moral Theology, vol. ii, 31.

settled, and the opinion that it is sufficient is no longer merely probable, but morally certain. Aggravating circumstances affect only the material integrity of confession, and in this and in similar questions we may use probable opinions, as there is no question of the validity of the sacrament. In the same way if there is other certain matter of the sacrament, doubtful sins only affect the material integrity of the confession.

## 7

## CONFESSIONS ON BOARD SHIP

Titius regularis sacerdos missionarius in quadam Angliæ diœcesi a superioribus cum scholastico et fratre coadjutore in Africam meridionalem ad vineam Domini ibi colendam fuit missus. Dum discessum navis in quadam domo Ordinis expectabat quæstio orta est de Titii facultatibus ad audiendas confessiones durante itinere. Quidam Patres putabant eum jam habere omnia requisita ad confessiones tum sociorum tum externorum in navi audiendas, alii putabant eum requirere specialem delegationem P. Provincialis et hanc sufficere, alii denique dicebant eum debere petere facultates pro externis ab Episcopo portus unde navis solvat. Unde quærit:

1. Quid requiratur et sufficiat ut Titius possit durante itinere confessiones sociorum audire?

2. Num dicti socii eidem confiteri teneantur, et num posset Titius eis permittere ut alteri sacerdoti cuilibet confiterentur?

3. Quid ad casum?

### Solution

1. What is requisite and sufficient to enable Titius to hear the confessions of his companions during the journey?

Regulars on a journey must confess to *socio idoneo si habent*. It is commonly held that a priest is *idoneus* who

is neither under censure nor irregularity, even though he has no special approbation.[1]

2. Are the said companions bound to confess to Titius, and could Titius grant them leave to confess to any other priest?

If Titius were not superior there would be no difficulty; his companions would be bound to confess to him as he is the only priest in the party. But by a decree of Clement VIII, May 26, 1593: "Non licet Superioribus Regularibus confessiones subditorum audire nisi quando peccatum aliquod reservatum admiserint, aut ipsimet subditi sponte ac proprio motu id ab eis petierint." Hence some authorities think that if Titius is Superior of the party, his companions are under no obligation to confess to h m, and that they may confess even without special leave of Titius to any suitable priest. If Titius is Superior with the faculties of other local superiors, he can grant leave to his subjects to confess to any suitable priest.[2]

3. The case. Titius has all that is requisite and sufficient for hearing the confessions of his companions if he is *idoneus*, as we presume him to be. In order to be able to hear the confessions of externs on board ship he must have faculties either from the bishop of the diocese where he was last stationed, or from the bi hop of the port of embarkation, or from the bishop of any other place at which the ship touches. We presume that he had faculties in the diocese where he was stationed, so that he has all that is requisite for hearing the confessions of anybody who comes to him on board.[3]

[1] St. Alphonsus, lib. vi, 575.

[2] De Arcos, Appendix Theol. Moral, n. 53.

[3] Manual of Moral Theology, vol. ii, 187.

## 8

## A PRIVILEGE OF REGULARS

Titius confessarius alumnorum in collegio quodam Regularium inter vacationes visitat domum in alia diœcesi quam occupant alumni aliqui ex quibus unus petit a Titio ut confessionem audiat. Annuit Titius postea tamen de validitate absolutionis a se datæ dubitat. Ipsi cupienti confiteri dicit Caius sacerdos ejusdem ordinis qui cum scholastico quodam curam gerit alumnorum, licere ire ad sacerdotem secularem qui ibi curam animarum habet. Unde quæritur:

1. Quid requiratur in ministro pœnitentiæ ut licite et valide sacramentum administret?

2. Quibus debeant vel possint confiteri Regulares tum intra domum propriam, tum in domo ejusdem Ordinis non propria, tum in itinere?

3. Quid ad casum?

### Solution

1. What is required in the minister of Penance in order that he may lawfully and validly administer the sacrament?

The minister of Penance in order to administer the sacrament validly must be a validly ordained priest, he must have jurisdiction, and also approbation, if the penitent be a secular. To act lawfully, he must be in the state of grace, free from censure, and he must observe all the

regulations made by the Church for the proper administration of Penance.[1]

2. To whom may or ought Regulars confess in their own monastery, in another monastery of the same Order, and on a journey when out of their own monasteries?

Regulars ought to confess to the confessors appointed for them by their Superior while in their own monastery; in another house of the same Order they may confess to the confessors appointed by the Superior of that house, who can absolve them even from reserved cases *cum onere se sistendi proprio superiori vel ab eo delegato;* while on a journey they must confess to a fit companion if they have one, otherwise they may confess to any fit priest, whether secular or regular.[2]

3. The case. Titius is one of the confessors of the boys while they are in the college, and he retains his faculties while the boys remain under the Order's jurisdiction, so that there was no reason why he should doubt about the validity of the absolution given by him, even though he had no approbation from the bishop of the diocese where the confession was heard.[3]

In the supposition, which seems to be excluded by the terms of the case, that Caius was a confessor of the monastery to which Titius belonged, and was not Superior, Titius would then be bound to confess to him. Otherwise Titius was not bound to go to confession to Caius, though he might do so if he chose. He was justified in confessing to any priest who was fit, whether secular or regular.

[1] Manual of Moral Theology, vol. ii, 178, 27 ff.
[2] Ibid., p. 189.
[3] Ibid., p. 188.

## 9

## A REGULAR'S APPROBATION

Caius sacerdos regularis post examen ab Episcopo requisitum feliciter datum facultates ordinarias ab eo ad proximam synodum accepit. Superior domus qui solus ad synodum accessit pagellas aliorum patrum secum asportabat renovandas, Caii vero absentis non potuit invenire facultates, quæ proinde non fuerunt ab Episcopo renovatæ. Proximo sabbato domum revertit Caius nec tempus suppetebat ad facultates ab Episcopo petendas, unde dubium oriebatur utrum confessiones audire posset necne. Post aliquam dubii discussionem superior permisit ut Caius confessiones fidelium audiret, postea vero scrupulis angebatur de validitate absolutionum quæ a Caio datæ fuerunt. Unde quæritur:

1. Quinam sit minister sacramenti Pœnitentiæ?

2. A quonam accipiant regulares jurisdictionem ad confessiones fidelium audiendas?

3. Num absolutio data a sacerdote qui habitualiter jurisdictione careat nihilominus aliquando valere possit?

4. Quid ad casum?

### Solution

The first question is answered above, p. 169.

2. From whom do Regulars receive jurisdiction to hear the confessions of the faithful?

It is possible for Regulars to receive jurisdiction both from their own superiors and from the bishop of the place. As to whether they actually receive it from one or the other, or from both, depends on the intention of the bishop and of the superior in question. In any case the approbation of the bishop is required to hear the confessions of seculars.[1]

3. Can the absolution given by a priest who is without habitual jurisdiction nevertheless sometimes be valid?

Yes, the absolution is valid if the Church supplies jurisdiction for the act, as she sometimes does. Thus any priest may validly absolve those who are in danger of death, or when it is probable that he has jurisdiction, or when the faithful go to confession to a priest under the general belief that he has faculties and when also he has a colorable title, and probably even when there is only the general belief without any colorable title.[2]

4. The case. Caius, a Regular priest, was examined by the bishop and granted by him faculties till the next synod. His faculties were not renewed at the next synod and the question arose whether he could go on hearing the confessions of the faithful. His Regular superior allowed him to do so, and thereby gave him jurisdiction which Regulars receive from the Pope through their Superiors. There was, however, a difficulty about Caius' approbation. He had been examined by the bishop, had passed with success, and had a right to receive general and perpetual approbation. However, the bishop only gave him approbation till the next synod. So that, whatever the merits of Caius were, in fact he had no

[1] Manual of Moral Theology, vol. ii, 189.
[2] Ibid., 184.

approbation after the next synod was over. He should not then have heard confessions, unless indeed it was known to be the intention of the bishop that in such cases where a priest's faculties had not been renewed through inadvertence or by accident, they should not cease at the time appointed, but should continue. However, as the faithful knew nothing about this, those that came to him were probably absolved on account of the common mistake, the Church probably supplying faculties.[1]

[1] Manual of Moral Theology, vol. ii, 185.

## 10

## CONFESSOR OF NUNS

Caius missionarius Rector in quodam oppido Julium habuit in curam animarum coadjutorem. Julius quidem specialiter ab Episcopo approbatus ad audiendas confessiones Sororium a Misericordia nuncupatarum quæ domum in oppido habuerunt, quadam hebdomada abfuit, die autem consueto quo Julius earum confessiones audire solebat, Caius quamvis non specialiter ab Episcopo approbatus recenti discussione in quadam ephemeride ecclesiastica permotus, ad conventum perrexit et confessiones monialium audivit. Quod quum Julius reversus cognovisset monialium confessiones Caio factas esse repetendas utpote invalidas sustinuit. Unde quæritur:

1. Quænam requirantur in ministro sacramenti Pœnitentiæ?

2. Quid specialiter requiratur ad audiendas confessiones monialium?

3. Quomodo differat jurisdictio ordinaria et delegata?

4. Quid ad casum:

### Solution

The first question was answered above, p. 169.

2. What is specially required in order to hear the confessions of nuns?

If a nun is lawfully outside her convent and makes her

confession in a public Church, any confessor with ordinary diocesan faculties may hear her confession. If the confession is made in the convent, no priest can hear her confession unless he be specially approved by the bishop of the place for hearing nuns' confessions in that particular convent. This has long been the discipline of the Church with respect to nuns with solemn vows. Provincial Councils (I West. d. XXVIII) and practice applied the same rule to nuns with simple vows. Diocesan faculties in England generally contain some such clause as the following: "Confessiones excipiendi Fidelium utriusque sexus, non tamen Monialium aut Novitiarum nisi extra claustra legitime versentur, neque in monasteriis aut conservatoriis confessiones puellarum aut mulierum ibidem habitantium." Finally Leo XIII decreed in his Constitution *Conditæ*, Dec. 8, 1900: "Quod si sodalitates muliebres sint, designabit item Episcopus sacerdotes a confessionibus tum ordinarios tum extra ordinem, ad normam Constitutionis *Pastoralis Curæ* a Benedicto XIV decessore nostro editæ, ac decreti *Quemadmodum* dati a sacro Concilio Episcopis et Religiosorum ordinibus præposito, die XVII Dec. 1890, quod quidem decretum ad virorum etiam consociationes pertinet qui sacris minime initiantur."

3. How do ordinary and delegated jurisdiction differ?

"Ordinary jurisdiction is the authority which is exercised in virtue of an office which one holds and in one's own name; delegated jurisdiction is granted by one who has ordinary jurisdiction and is exercised in that person's name." [1]

4. The case. Caius, a missionary Rector, had a coadju-

[1] Manual of Moral Theology, vol. ii, 183.

tor, Julius, who was specially approved by the bishop for hearing the confessions of the Sisters of Mercy who had a convent in the parish. While Julius was absent, Caius went and heard the confessions of the nuns, though he had no special approbation from the bishop. Some authorities hold that a parish priest, inasmuch as he has ordinary jurisdiction over all his flock, from which nuns with simple vows are not exempt, may hear the confessions of such nuns in their convent without special approbation from the bishop. Whatever may be said on this point, the doctrine can not be applied to Caius, who is not a parish priest, and who has only delegated jurisdiction. That jurisdiction was limited by the bishop and did not extend to nuns in their convent. However, as there was *communis error,* the absolution would probably be valid, as the Church would probably supply all that was wanted.[1]

[1] Manual of Moral Theology, vol. ii, 185.

## 11

### FULL AND SPECIFIC CONFESSION

Titius confessarius advertit aliquos pœnitentes non satis distinguere diversas species peccatorum quum confiteantur fornicationem quando adulterium dicere deberent. Unde quum audit confessiones adultorum, fornicationem confitentes interrogare consuevit utrum in matrimonio sint juncti; incertus tamen hæret debeatne interrogare necne utrum sint sponsi; nam hi si cum alia ac sponsa peccent fidem violant sponsalitiam quæ ex justitia obligat. Pariter incertus est Titius utrum debeat interrogare confitentes incestum de gradu consanguinitatis vel affinitatis. Ad lumen aliquod Titio præbendum quæritur:

1. Undenam desumatur distinctio specifica peccatorum?
2. Quænam circumstantiæ necessario sint exprimendæ in confessione?
3. Quid ad casum?

#### Solution

1. Whence is the specific distinction of sins derived?

Sins are specifically distinct when their formal objects are specifically different, or when they are opposed to specifically distinct virtues, or when they are transgressions of formally distinct laws.[1]

2. What circumstances must necessarily be mentioned in confession?

[1] Manual of Moral Theology, vol. ii, 141 f.

Those circumstances which change the moral or theological species of the sin must be mentioned in confession. There is a controversy among divines as to whether circumstances which notably increase or diminish the malice of a sin, but which do not change its nature, should be mentioned in confession. The negative opinion is probable and safe.[1]

3. The case. If Titius has learned by experience that in a certain place penitents do not sufficiently distinguish between adultery and fornication, he does well in general to ask those who confess fornication whether they are married. He will not be obliged to put this question in every case of such a sin being confessed; without doubt the confessions of some penitents will be so minute and descend to particulars in such a way that he will be able to rely on the theological accuracy of the terms which they use. There is no necessity for Titius to ask those penitents who confess fornication and deny that they are married whether they are betrothed. Some theologians, it is true, teach that the circumstance of betrothal changes the species of a sin of fornication committed with another woman, but others deny it, on the ground that betrothal is only a promise to give marital rights; it does not actually give them.

Titius should not ask questions about the degree or kind of relationship when incest is confessed, for it is probable that incest committed with any relation is of the same species, unless it is committed with a relation of the first degree of consanguinity in the direct line, and as this sin is very rare and asking about it might give scandal to the penitent, the confessor should not ask about it, unless in a particular case he has good reason to suspect that in fact such a sin was committed.

[1] Manual of Moral Theology, vol. ii, 165.

## 12

## ABSOLUTION OF THE DYING

Caius sacerdos vocatur ad parochianum qui morbo typhoido, ut vocatur, laborat. Invenit eum periculose decumbentem, somno profundissimo, *coma* ut dicitur, sopitum, et sensibus destitutum. Negant adstantes eum petiisse sacerdotem antequam ad hunc statum devenit, attamen Caius ei sub conditione absoluto cetera sacramenta administrat. Unde quæritur:

1. Quænam sit materia sacramenti Pœnitentiæ?

2. Num absolutio dari possit si nullum signum doloris vel confessionis habeatur?

3. Quid ad casum?

### Solution

The first question is answered above, p. 151.

2. May absolution be given if the penitent gives no sign of sorrow or contrition?

Absolution may not be given under these circumstances except when the penitent is in danger of death and can not make any sign of sorrow or of a wish to confess. Even when such a penitent is in danger of death, many distinguished theologians held that absolution could not be given, because there is no matter for the sacrament. St. Alphonsus, however, held that absolution may be given in

such a case, according to the more common opinion as he asserted.[1]

To the difficulty about the matter of the sacrament, St. Alphonsus answers that perhaps the anxious breathing, sighs, and other movements of the dying person are attempts made by him to express sorrow for his sins and a desire to confess, and that the probability that this is so is sufficient to justify the giving of conditional absolution in such a case of necessity.[2]

3. The case. Caius acted rightly in giving the dying person conditional absolution and the last sacraments, even though he could make no certain signs of sorrow or of a desire to confess. This has become the common practice in such cases since the time of St. Alphonsus, and it may be explained by the reasons which the saint gives or perhaps in other ways. Ballerini, for example (Opus Morale, V, 404), suggests another way of explaining the modern practice. According to him it is probable that the sacrament of Penance consists in the absolution of the priest alone. Contrition is required as a disposition, but that may be presumed in the dying. Confession is also of divine law, according to the Council of Trent, but even a divine law does not bind when it is impossible to fulfil it. Necessity has no law. Without deciding whether this theory is probable or not, we may allow it some weight.

[1] Theol. Moral. lib. vi, 482.

[2] Manual of Moral Theology, vol. ii, 176.

## 13

## A PAIR OF PENITENTS

Caius sacerdos missionarius summo mane vocatur ad domum quamdam ubi plures familiæ habitant ad sacramenta ægrotis administranda. Ducitur ad quoddam cubiculum haud amplum at unicum quod habent ubi invenit duos senes, maritum et uxorem, in eodem lectulo laborantes *influenza* et, ut videtur, in periculo mortis. Statuit primo audire eorum confessiones, at quomodo id fieri possit salvo sigillo ignorat. Postquam de re deliberavit ad latus quo jacebat maritus accedit, rogat num velit confiteri, et quum annuat, num doleat de omnibus vitæ suæ peccatis, ac pariter annuentem absolvit, injuncto onere integre confitendi si postea convalescat. Ad alteram partem lectuli accedens idem fere iisdem verbis fecit uxori; ac tandem ceteris sacramentis administratis, cum benedictione infirmos reliquit. Unde quæritur:

1. Num et quo jure integra confessio requiratur in sacramento Pœnitentiæ?

2. Num et quando quis ab integra confessione excusari possit?

3. Quid de modo agendi Caii?

### Solution

1. Is a full confession required in Penance and by what law?

A full confession of all mortal sins that have not been directly absolved before is required in the sacrament of Penance by divine law, as the Council of Trent defined.[1]

2. Can one be excused from a full confession and when?

Yes, physical and moral impossibility excuse a penitent from making a full confession. By moral impossibility is meant that a full confession could not be made without grave inconvenience, extrinsic to confession, affecting the penitent, the confessor, or some third person.[2]

3. The case. The danger of a violation of the seal of confession, or the danger lest some one other than the confessor should hear the confession of the penitent, is considered by divines to be a sufficient inconvenience to excuse a penitent from making a full confession. There was, as is clear, this danger in the case proposed, and so Caius was justified in absolving the old couple without requiring a full and specific confession from them. If Caius thought that the suggestion of some venial fault, such as impatience, which they would find no difficulty in acknowledging in the hearing of the other party, would serve to make their contrition more definite and certain, there would, we think, be no objection to his mentioning such a sin, and asking them if they had been guilty of it, and were now sorry for it, and for all the other sins which they had committed.

[1] Sess. xiv, can. 7; Manual of Moral Theology, vol. ii, 164.

[2] Manual of Moral Theology, vol. ii, 168.

## 14

## ABSOLUTION BY TELEPHONE

Titius sacerdos Catholicus magno cum scandalo fidelium spretis obligationibus quibus ligabatur matrimonium cum muliercula quadam attentabat quacum postea tamquam negotiator seculariter vivebat per plures annos. Tandem aliquando in periculo mortis cum esse constitutum audiebat Caius sacerdos et quondam amicus, qui statim ad domum ibat ægroti et cum animo Titium juvandi petiit ut admitteretur. Ingressum aspere negabat muliercula affirmans medicum severissime ingressum omnibus prohibuisse. Zelo animæ salvandæ accensus Caius omnia media excogitabat quibus posset cum Titio communicare. Audiebat eum habere telephonium in privato cubiculo quo cum officio in civitate communicabat Ad officium convolabat Caius et licentia sub quodam prætextu obtenta utendi telephonio, loquebatur cum Titio, cum disponebat ad pœnitentiam fervidis suis hortationibus et confessum ope telephonii absolvit. Postea vero dubitans de absolutione data theologum consulit. Unde quæritur:

1. Quid requiratur ad licite et valide pœnitentes absolvendos?

2. Num confessio facta ab absente vel absolutio data ab absente valeat?

3. Quid ad casum?

### Solution

1. What is required for validly and lawfully absolving penitents?

Besides what is requisite on the part of the minister of Penance and of the penitent, there are certain conditions required for valid and lawful giving of absolution. For validity the form of words, "I absolve thee from thy sins," or at least, "I absolve thee," is necessary; and at the time of absolution the confessor and penitent must be morally present to each other. The latter condition is interpreted to mean that the penitent must not be further removed from the confessor when absolution is given than the ordinary tone of voice will carry. For the lawful administration of Penance the rubrics of the Ritual must be observed, and in particular the form of absolution given there must be used, and the priest should have on surplice and stole.[1]

2. Is confession or absolution valid when made or given by one who is absent?

No. This conclusion follows from the absolute prohibition under all circumstances by Clement VIII, 20 June, 1602, of confession made by letter to an absent priest or of absolution given by a priest to an absent penitent.[2]

3. The case. Most of the theologians who have treated the question consider that absolution given by telephone is invalid. The speakers are not morally present to each other; the instrument is a means of speaking with the

[1] Manual of Moral Theology, vol. ii, 175.
[2] Ibid., 164.

absent and distant. But, as we have seen, moral presence of confessor and penitent is necessary for the validity of Penance. On the ground that by using the telephone the voice of the confessor reaches the penitent, some theologians hold that absolution given by telephone is valid. Others would allow a confessor to use the instrument in a case of extreme necessity. There was extreme necessity in the case proposed, so that Caius is not to be blamed for what he did. On being asked whether it is lawful to give absolution by telephone in a case of extreme necessity, the Sacred Penitentiary answered, 1 July 1884; "Nihil est respondendum."

## 15

## AN UNFORTUNATE MOTHER

Petrus sacerdos missionarius ad mulierem suæ curæ commissam vocabatur quæ moribunda dicebatur. Obviam fiebat medico amico et catholico qui ad eamdem erat vocatus a quo Petrus audiebat mulierem, cujus maritus ab anno cum exercitu in Africa meridionali esset, factam ex delicto prægnantem, abortum in se non sine gravi vitæ periculo procurasse. Ad moribundam accedens Petrus eam monuit de statu periculoso et ut se ad mortem præpararet persuasit. Quum vero nihil de adulterio nec de abortu in confessione dixisset, quamvis intra annum elapsum se non esse confessam ultro admiserit, Petrus interrogabat utrum aliud quid quod conscientiam morderet haberet, cui ipsa, "Non, nihil aliud," respondit. Petrus vero nesciebat quid in casu esset faciendum præsertim quum homicidium esset in diœcesi intra casus ab Episcopo reservatos. Unde quæritur:

1. Quænam pœna contra abortum procurantes statuatur, et num mater abortum sibi procurans illam incurrat?

2. Reservato homicidio ab Episcopo num abortus comprehendi censeatur?

3. Quid a confessario faciendum sit quando pœnitens in confessione peccatum a se commissum neget?

4. Quid ad casum?

### Solution

1. What spiritual penalty is annexed to the crime of procuring abortion, and does a mother who commits the crime incur the penalty?

By the Constitution *Apostolicæ Sedis* of Pius IX, those who procure abortion are excommunicated. The absolution of the censure is reserved to the bishops. St. Alphonsus (III, 395) teaches that a probable opinion excuses mothers from the penalty of excommunication inflicted by Sixtus V on those who procure abortion. According to many recent theologians this opinion remains probable with respect to the Constitution *Apostolicæ Sedis* of Pius IX, since the object of Pius IX was to limit the number of censures, not to increase it.[1]

2. When homicide is reserved by a bishop, is abortion comprehended in the term?

Not usually; in many of the *pagellæ* of the bishops who reserve homicide, abortion is specially excepted, and even if it is not expressly excepted it may be understood as tacitly excepted, because it is a crime with its own special penalties inflicted by the Holy See.

3. What should a confessor do when a penitent denies that he has committed a sin which nevertheless the confessor thinks that he has committed?

The confessor should ask him whether there is not something more, and exhort him to make a full and sincere confession without fear. If the penitent still denies that there is anything more, the confessor should ordinarily absolve him. For ordinarily the confessor may and should

[1] Lehmkuhl, II, 1247, eleventh edition.

believe the penitent both against and for himself. If it is evident to the confessor that the penitent is lying and making a bad confession, he should of course not absolve him, but occasions when he can be sure of this will be rare.[1]

4. The case. After exhorting the woman to make a full confession without fear, and asking her again whether there is anything else on her conscience, as for example, against the sixth commandment, if she persists in her denial, Peter should absolve her. It might possibly be that she had not committed either formal adultery or abortion, or even if she had committed those crimes there might be some reason subjectively sufficient to excuse her from confessing them to Peter. As she is in danger of death, and all reservation ceases in such a case, even if abortion were comprehended under homicide and reserved, Peter could absolve her without recurring to the bishop.

[1] Bucceroni, Theol. Moral., vol. ii, 824.

## 16

## DOUBTFUL JURISDICTION

Titius sacerdos diœcesis Liverpolitanæ viam ferream ingressus apud Liverpool Londinum perrecturus in curru solus erat quum Paulus intraret et itinere incœpto colloquium cum Titio instituerat. De aliis rebus sermone facto tandem de religione colloquebantur. Titius invenit Paulum esse Catholicum nec tamen a multis annis ob dissensionem cum parocho esse confessum, paratum vero esse hic et nunc confiteri si Titius eum audire velit. Titius dubitabat utrum adhuc essent intra fines diœcesis Liverpolitanæ, sed quum Paulus sistere vellet apud Crewe, putans non esse immorandum statim confessionem audiit Paulumque absolvit. Postea de re cogitanti plura dubia ei occurrunt quæ solvenda proponit. Unde quæritur:

1. Quis sit minister sacramenti Pœnitentiæ?

2. Num liceat dubia tantum jurisdictione prædito absolvere pœnitentem?

3. Num dubie absolutus iterum confiteri teneatur?

4. Quid de modo agendi Titii?

### Solution

The first question is answered above, p. 169.

2. May a priest who has only doubtful jurisdiction absolve a penitent?

He may not, except in case of necessity, for the sacrament would be exposed to the danger of nullity, and the penitent to harm. In case of necessity he may. Theologians admit

as just reasons for giving absolution with doubtful jurisdiction the necessity of making one's Easter communion, or if the penitent has not confessed for a long time.

3. Is one who is doubtfully absolved bound to confess again?

Most theologians answer Yes, for the reason that he is bound to make certain that his sins have been submitted to the keys. This doctrine hardly agrees with the principles of probabilism, for unless there was some chance that the absolution would be valid there was no use giving it, and after the event *Standum est pro valore actus.* St. Alphonsus (VI, 432) seems to restrict the obligation of confessing again to the case in which the penitent afterwards finds out for certain that the priest had no jurisdiction when he granted absolution.

4. What about Titius' action? Titius had faculties only for the diocese of Liverpool, but when he gave absolution he was not certain whether he was in the diocese of Liverpool, or in that of Shrewsbury which borders on it. With this doubt in his mind he gave absolution. In this he acted rightly. For it was not certain that the jurisdiction with which he had started on his journey had ceased, and he could presume that he still had it. As Paul had probably submitted his sins to a duly qualified priest and had received absolution for them, he was not strictly bound to confess them again, but Titius should have told him about the doubt concerning his faculties, so that Paul might confess again if he wished to make his absolution certain, or in case he became dangerously ill before going again to confession.[1]

[1] Manual of Moral Theology, vol. ii, 185 f.

## 17

## A LIE IN CONFESSION

Inter confitendum sacerdoti Julio Anna dicit se esse anxiam de ultima sua confessione eo quod in ea sit mentita. Julius eam interrogat quomodo id acciderit. Respondit Anna confessarium interrogasse utrum ab ultima confessione diebus abstinentiæ carnes comedisset quod se negasse, quum fuerit conscia se semel ob debilitatem propter quam putaret id sibi licere carnes feria sexta manducasse; nunc vero ut tranquilla gaudeat conscientia omnia velle Julio sincere confiteri. Julius vero ponderat utrum debeat Anna ultimam confessionem integre repetere necne. Unde quæritur:

1. Quænam sit materia necessaria et quænam libera sacramenti Pœnitentiæ?

2. Num circumstantiæ aggravantes vel minuentes sint materia necessaria hujus sacramenti?

3. Num obligatio adsit confessario interroganti sincere respondendi?

4. Quid ad casum?

### Solution

The first question is answered above, p. 151.

2. Are circumstances which increase or lessen the malice of sin the necessary matter of Penance?

The question is disputed, but probably circumstances which only increase or lessen the malice of sin and do not

change its moral or theological species, are not necessary matter for Penance.[1]

3. Is the penitent obliged to give a sincere answer to questions put to him in confession?

Yes, whenever the confessor questions him about what is necessary to make his confession full and integral, or about what is necessary in order to judge of his dispositions or obligations, so as to be able to counsel and direct him aright.[2]

4. The case. Ann when asked in confession whether she had eaten flesh meat on days of abstinence denied that she had, although she was conscious that she had taken meat once on a day of abstinence when she thought that she was justified in taking it on account of feeling weak. In her next confession Ann told this to her confessor and said she was anxious about it.

Objectively, of course, Ann committed no fault, for she answered her confessor according to the sense of his question. The confessor wanted to know whether she had broken the law of abstinence, and in answering No, Ann told the truth. Therefore unless Ann thought at the time when she gave the answer to her confessor that she was committing a grave sin, she should now be told not to trouble further about it. Her subjectively erroneous conscience might, of course, have caused her to commit grave sin subjectively, and then it would be necessary to confess this, and repeat the former confession.

[1] Manual of Moral Theology, vol. ii, 165 f.

[2] Bucceroni, vol. ii, 716.

## 18

## A DYING NUN

Catharina monialis quæ ad Congregationem votorum simplicium pertinebat confiteri nollebat confessario ordinario qui singulis hebdomadis ad conventum muneris exercendi causa veniebat, cum majori enim fructu ut sibi videbatur quandocunque confessione indigebat Titio sacerdoti qui ecclesiæ propinquæ inserviebat confitebatur. Occasionem confitendi in ecclesia Titii facile inveniebat quando a schola elementari ubi puellas quotidie docebat ad conventum revertebatur. Graviter autem ægrota Catharina rogabat superiorissam ut ad confessionem audiendam Titium advocaret. Unde quæritur:

1. Quid statuat jus ecclesiasticum de confessionibus monialium?

2. De quibusnam monialibus agant dictæ leges?

3. Quid de actis vel agendis a Catharina, Titio, et superiorissa in casu?

### Solution

1. What does ecclesiastical law lay down about the confessions of nuns?

There should be only one ordinary confessor for each convent, but an extraordinary confessor should be offered the nuns two or three times a year, and indeed as often as a nun is conscientiously and reasonably driven to ask for one.

2. Of what nuns do these laws treat?

Although these laws more specially relate to nuns under solemn vows, yet by custom, provincial legislation, by special restrictions placed in the *pagella* of faculties, and according to the express instructions of the Holy See, the same laws now bind nuns with simple vows. When lawfully outside the convent nuns may confess to any approved confessor. See above, p. 174.

3. What about the actions of Catherine, Titius, and the Superioress?

First with regard to Catherine's conduct. The absolutions which she received from Titius were valid, and if she had gone to confession to him only once in a way, she could not have been blamed, for nuns when lawfully outside their convent may confess to any approved confessor. But Catherine made it a regular practice to avoid the ordinary confessor of the convent, and to choose her own confessor outside. This is contrary to the spirit of the laws made by the Church for good reasons with regard to the confessors of nuns, and she should not have done it.

With regard to Titius. He was justified in hearing the confession of Catherine and absolving her, but if and when he noticed that she came to him regularly, he should have admonished her to act more in the spirit of the laws of the Church.

The Superioress should have intervened if she knew what Catherine was doing. As Catherine is now dangerously ill the Superioress should humor her and send for Titius, who will have faculties to hear Catherine's confession in the convent as she is in danger of death.

## 19

### A BISHOP'S RESERVED CASE

Caius, sacerdos regularis, dum missionem tradit in quodam oppido, a civitate Episcopali longe distanti, audit confessionem Titii operarii qui ibidem degit. Inter confitendum Titius dicit se recenter junctum fuisse matrimonio cum Bertha protestantica coram registrario civili, ad tale facinus adactum propter difficultatem a parocho obtinendi dispensationem a matrimonio mixto. Caius recordatur casum esse ex iis quos Episcopus sibi reservat, quomodo autem sit procedendum nescit. Titius enim videtur perpetuo impeditus quominus Episcopum adeat, ad scribendum vero etiamsi scribere possit nulla lege teneri videtur; quod etiam de ipso Caio dici posse videtur; ex altera parte Titius scandalum dedit quod est reparandum. Unde quæritur:

1. Quid lex ecclesiastica statuat de habente casum papalem et impedito quin Romam adeat?

2. Quid de habente casum episcopalem et impedito quin Episcopum adeat?

3. Quid a Caio faciendum? et quid si Titius ignoret casum esse reservatum ab Episcopo?

#### Solution

1. What does the law of the Church prescribe with regard to a penitent who has a papal case and is prevented from going to Rome?

If there is no need for immediate absolution the case must be submitted by letter to the Grand Penitentiary at Rome either by the penitent himself, or by his confessor, in order that special faculties for granting absolution may be obtained. If the penitent is under the necessity of obtaining absolution at once, he may be absolved directly by any confessor, but within a month the case must be submitted to Rome by the penitent or by his confessor under pain of falling again into the same case.[1]

2. What must be done with a penitent who has incurred a bishop's case and is prevented from going to the bishop?

The regulation given above for the treatment of papal cases is gradually being applied to bishops' cases also. Otherwise a priest without special faculties may give absolution from a bishop's case when the penitent can not go to the bishop. The absolution will be indirect if the penitent can present himself to the bishop within six months, direct if he can not.[2]

3. The case. If Titius was married before April 19, 1908, the marriage would be valid in England and in most parts of the United States, and Caius might absolve him to enable him to go to Holy Communion. If the bishop of the diocese requires that reserved cases should be submitted to him by letter, this should be done, either by the penitent or by the confessor. If Titius was ignorant that his case was reserved to the bishop, his ignorance probably excuses him from incurring the reservation, unless the bishop has expressly declared the contrary. If Titius were induced to give the promises usually made

[1] Manual of Moral Theology, vol. ii, 204.
[2] Ibid., 207 f.

before a dispensation is granted for a mixed marriage, and if he promised to lead a good Catholic life himself, it would go far to repair the scandal he caused.

If the marriage took place after the decree *Ne temere* came into force, the marriage is null and void on account of clandestinity. The case should be referred to the bishop, who will doubtless grant faculties to Caius or to the parish priest to revalidate the marriage and instruct him as to what he is to do. In the meantime Titius should not use marital rights, and it would be well if he kept away from home. In the possible case of Titius thinking in good faith that he was really married, he might be left in his good faith until the dispensation arrived. After the dispensation has been fulminated, the religious marriage should take place before the parish priest or his delegate and two witnesses.

## 20

## DE ABSOLUTIONE COMPLICIS

Titius sacerdos dum exercitia spiritualia peragebat misericordia divina motus pactum aliquod cum Paulo sacerdote manifestabat confessario. Quum enim Titius et Paulus mutui scirent se sæpius cum mulieribus peccare conveniebant inter se de confessione mutuo facienda et de absolutione mutuæ complici danda. Quibus auditis dubitabat confessarius Titii utrum absolvere eum nunc possit. Unde quæritur:

1. Quid de absolutione complicis statuat lex ecclesiastica?
2. Quomodo sit verbum *complex* intelligendum?
3. Quid faciendum a confessario sacerdotis qui complicem absolverit?
4. Quid ad casum?

### Solutio

1. Quid de absolutione complicis statuit lex ecclesiastica?

Sacerdos qui cum alia persona graviter contra castitatem deliquerit prohibetur quominus eam personam absolvat a peccato complicitatis, jurisdictione quoad istud peccatum absolvendum privatur, ac si absolutionem istius peccati attentat excommunicationem specialissimo modo Romano Pontifici reservatam incurrit.[1]

2. Quomodo sit verbum *complex* intelligendum?

[1] Manual of Moral Theology, vol. ii, 213.

Complex in peccato turpi hic intelligitur qui interne et externe grave peccatum contra castitatem sive verbis, sive aspectu, sive facto, cum sacerdote etiam ante sacerdotium susceptum commiserit.[1]

3. Quid faciendum a confessario sacerdotis qui complicem absolverit?

Debet confessarius si sacerdos confitetur se attentasse absolutionem complicis illum monere ut petat facultatem a S. Pœnitentiaria qua absolvi possit a suo confessario. Si velit, potest ipse confessarius hanc facultatem petere. Nomen pœnitentis non declaratur S. Pœnitentiariæ. Si necesse sit ad scandalum vitandum vel propter aliam justam causam ut pœnitens statim absolvatur, confessarius eum absolvere directe potest sed sub onere se sistendi infra mensem per litteras ut supra S. Pœnitentiariæ.[2]

4. Ad casum. Titius et Paulus sacerdotes mutuo conveniebant de complicibus mutuis in peccato turpi absolvendis ac de se ipsis invicem absolvendis a suis peccatis. Istud pactum est ipsum contra castitatem quatenus est medium quo impuritati facilius indulgere valent; sunt igitur Titius et Paulus complices in peccato turpi nec possunt se mutuo absolvere, quod si attentent dictam excommunicationem incurrunt.[3]

[1] Manual of Moral Theology, vol. ii, 214.
[2] Ibid., 204.
[3] Bulot, Compend. Theol. Moral., vol. ii, n. 575.

## 21

### FICTA ABSOLUTIO COMPLICIS

Titius sacerdos se confert ad domum quamdam Regularium ad vacandum exercitiis spiritualibus. Post aliquot dies ibidem confessionem facit Patri Caio qui ei exercitia tradebat. Inter alia peccata confitetur se inhonestos sermones habuisse cum Philippo amico qui ad gregem sibi commissum pertinebat et postea eum absolvisse; præterea se turpiter peccasse cum Maria ejus filia semel et iterum, et eamdem sibi confessam absolvere semel finxisse; alia vice in confessionali quum eam adesse ex vocis sono suspicaretur, ne autem certior esset factus ab interrogando eam abstinuisse ac tunc revera absolvisse, postea tamen quum peteret sacram Communionem eam adfuisse in confessionali factum esse certum. Titius addit se maxime dolere de præteritis, firmissime proponere vitæ emendationem et absolutionem petit. Unde quæritur:

1. Quid statuat Benedictus XIV in Constitutione *Sacramentum Pœnitentiæ*?

2. Quid de facultate absolvendi a casibus ibidem contentis?

3. Quid ad casum?

#### Solutio

1. Quid statuit Ben. XIV in Const. *Sacramentum Pœnitentiæ*?

Benedictus XIV in dicta Constitutione agit de crimine sollicitationis et de attentata absolutione complicis. De

sollicitatione statuit Ordinarios teneri inquirere et procedere contra sacerdotes qui sunt rei sollicitationis in sacro tribunali; omnes confessarios qui sciant suos pœnitentes fuisse sollicitatos ab aliis in sacro tribunali teneri ad eosdem monendos de obligatione sollicitantes denunciandi; potestatem absolvendi eos qui falso accusant sacerdotes sollicitationis esse Summo Pontifici reservatam. De attentata absolutione complicis statuit sacerdotem hujus criminis reum incurrere excommunicationem S. Pontifici pariter reservatam.[1]

2. Quid de facultate absolvendi a casibus ibidem contentis?

Absolutio a censuris in Const. *Sacramentum Pœnitentiæ* contentis est modo specialissimo reservata S. Sedi ita ut non comprehendatur facultas ab eis absolvendi etiam in facultate absolvendi ab omnibus casibus S. Sedi specialiter reservatis.[2]

3. Ad casum. Titius inhonestos sermones cum Philippo habuit eumque postea absolvit. Si ita inhonesti fuerint sermones ut grave peccatum contra castitatem constituerent, absolutio fuit nulla et irrita, ac Titius in casum reservatum incurrit (S. Officium, 28 Maii 1873). Fingendo absolutionem Mariæ non evitabat Titius excommunicationem, juxta sæpe declarata a S. Pœnitentiaria et S. Officio.[3]

Abstinendo ab interrogatione ne agnosceret complicem ac postea eam absolvendo, videtur Titius cum ignorantia crassa et supina egisse, ac proinde censuram iterum incurrisse juxta responsum S. Officii 13 Jan. 1892.

[1] Manual of Moral Theology, vol. ii, 210 ff.
[2] Ibid., 205.
[3] Génicot, vol. ii, n. 353.

Unde Titius pluries excommunicationem specialissimo modo reservatam incurrit, nec poterit absolvi sine facultate specialiter accepta a S. Pœnitentiaria, cui est declarandum quoties Titius complices absolverit.

## 22

## DISTINCTIO INANIS

Caius sacerdos ad pedes Titii confessarii provolutus confitetur se pœnitentem quamdam in sacro tribunali ad grave peccatum turpe sollicitasse, necnon postea apud se illud peccatum confitentem eamdem directe ab aliis peccatis indirecte a peccato complicitatis absolvisse, in quod nullam jurisdictionem se habere bene cognovisse nec illud absolvere intendisse declarat. Titius absolvit Caium quamvis sollicitatio in sacro tribunali sit peccatum ab Ordinario reservatum, eo quod eras celebrare pro populo pœnitens ex officio teneatur, nescit tamen utrum onus Romam scribendi sit ei imponendum utpote censura excommunicationis ligato ob absolutionem complici datam. Unde quæritur:

1. Quid sit casuum reservatio et quinam ejus finis?
2. Unde dignoscantur casus reservati?
3. Quid facere debeat confessarius peccatum reservatum audiens?
4. Quid ad casum?

### Solutio

1. Quid est casuum reservatio et quinam ejus finis?

Reservatio casuum est limitatio jurisdictionis quam confessarius retinet quoad cetera peccata quamvis denegetur quoad reservata. Finis reservationis est disciplina

populi Christiani, ut nempe deterreatur a peccatis reservatis committendis propter difficultatem obtinendi absolutionem, et ut qui ea committat peritiorem habeat confessarium.[1]

2. Unde dignoscuntur casus reservati?

Casus papales fere omnes continentur in Constitutione Pii IX *Apostolicæ Sedis*, præter unum de falsa accusatione sollicitationis, quod habetur in Constitutione Benedicti XIV *Sacramentum Pœnitentiæ*, et aliud de stipendiis Missarum in decreto S. C. C. 11 Maii 1904. Casus episcopales habentur in pagellis quas confessariis concedunt episcopi. Casus Regularium in eorum Constitutionibus et regulis inveniuntur.

3. Quid facere debet confessarius peccatum reservatum audiens?

"Extra articulum mortis," ait Tridentinum (Sess. XIV, c. 7), "sacerdotes quum nihil possint in casibus reservatis, id unum pœnitentibus persuadere nitantur, ut ad superiores et legitimos judices pro beneficio absolutionis accedant." Sæpe tamen ex caritate tenebitur confessarius speciales facultates obtinere ut ipse pœnitentem reservato peccato oneratum absolvat.

4. Ad casum. Caius sollicitavit ad turpe peccatum pœnitentem in sacro tribunali, quod peccatum fuit Episcopo reservatum. Præterea complicem postea ab aliis peccatis absolvit non intendens eam a peccato complicitatis absolvere, deinde sua peccata Titio est confessus. Titius recte fecit Caium absolvendo propter necessitatem in qua versabatur cras pro populo celebrandi. Absolutio peccati Episcopo reservati erat indirecta, ac proinde tenebitur Caius obtinere directam absolutionem vel ab Epis-

[1] Manual of Moral Theology, vol. ii, 192

copo vel a delegato ab eo. Dedit Caius absolutionem complici et sic incidit in casum S. Pontifici reservatum, nam attentabat complicem absolvere nec potuit restringere absolutionem mera sua intentione ad cetera peccata, quia non pendet ab intentione sacerdotis ad quæ peccata inter confessa absolutio a se data extendere debeat. Præterea fingit se absolvere pœnitentem complicem et hac ratione incurrit censuram. Unde tenebitur infra mensem se sistere S. Pœntitentiariæ ejusque mandatis obtemperare.

## 23

## ERROR NON DAT JURISDICTIONEM

Caius sacerdos mittitur ad quamdam missionem ut ad tempus vices quasi-parochi infirmi suppleat. Dum confessiones audit venit Martha quæ se accusat turpis peccati cum sacerdote pluries admissi. Consuetudinem peccandi suspicatus Caius interrogat utrum ante ultimam confessionem idem peccatum commisisset, et invenit Martham habere habitum peccandi cum sacerdote, et apud eumdem postea confitendi; quippe quæ nesciat quidquam obstare, quod valde probabiliter verum esse Caius putat de omnibus fidelibus utpote rudibus qui ad istam missionem pertinent. Hinc Caius dubitat quid a se sit faciendum. Unde quæritur:

1. Quid statuatur a Benedicto XIV in Const. *Sacramentum Pœnitentiæ*?

2. Num et quando possit error communis supplere confessario jurisdictionem?

3. Quid a Caio faciendum?

### Solutio

Primæ quæstioni respondetur supra, p. 200.

2. Num et quando potest error communis supplere confessario jurisdictionem?

Ecclesia certo supplet jurisdictionem si adsit titulus coloratus simul cum errore communi. Probabiliter etiam

supplet cum solo errore communi etiamsi non sit titulus coloratus conjunctus. Quæ tamen probabilis sententia non potest applicari casui in quo complex in peccato turpi putat se posse absolvi a complice sacerdote. Nam talis error est privatus, et populus potius ignorat legem ecclesiasticam quæ privat complicem jurisdictione quam circa illam errat. Deinde quidquid sit de generali principio certum est Ecclesiam nolle supplere jurisdictionem complici sacerdoti ut hic complicem absolvat, nam expresse dicit Constitutio Benedictina *Sacramentum Pœnitentiæ;* "Sublata jurisdictione ad qualemcumque personam ab hujusmodi culpa absolvendam."

3. Ad casum. Confessiones Marthæ utpote bona fide factæ fuerunt validæ, et absolutio ceterorum peccatorum fuit directa quum sacerdos complex tantum privetur jurisdictione "quoad hujusmodi culpam absolvendam." Absolutio peccatorum complicitatis fuit indirecta ac proinde tenetur Martha ea iterum clavibus subjicere ut directe absolvantur. Debet ergo Caius exquirere quoties vel a quo tempore sit confessa peccata complicitatis apud complicem, eamque monere ut illum in posterum evitet tum intra tum extra confessionem.

## 24

## ASKING THE NAME OF AN ACCOMPLICE

Albertus puer quatuordecim annorum in collegio quodam Catholico degens accusat se in confessione peccati turpis cum alio puero commissi. Interrogatus a confessario ultro fatetur se pluries antea ab eodem complice sollicitatum idem peccatum admisisse. Confessarius quum prudenter timeat ne iterum idem accidat rogat utrum sit paratus omnia media adhibere ad relapsum præcavendum, etiam ad complicem denunciandum. Puer dicit se libenter nomen complicis confessario ipsi manifestaturum, nullo tamen modo superioribus quamvis libenter concedat facultatem confessario superioribus rem declarandi. Ex circumstantiis judicat confessarius omnino esse necessarium ad relapsum præcavendum et etiam ad bonum commune collegii ut complex in casu superioribus denuncietur; unde puerum non posse absolvi hoc onere recusato, putat tamen sibi non licere nomen complicis inquirere. Unde quæritur:

1. Quid dicendum de necessitate confitendi peccatum si inde complex peccati confessario manifestetur?
2. Quid de confessario qui nomen complicis inquirat?
3. Quid faciendum a confessario in casu?

## Solution

1. Is it necessary to confess a sin if in so doing an accomplice in the sin is made known to the confessor?

If possible the penitent should go to a confessor who would not know the accomplice in the sin. If he can not conveniently do this, it is a controverted point as to whether he should mention the sin, which can not be confessed without also betraying an accomplice, or not. Some authorities hold that he may not mention the sin because the natural law of secrecy about another's sin is stricter than the positive law about the integrity of confession. Others hold the contrary opinion, because for good reason we may make known the secret sin of another. Both opinions are probable, so that the penitent may follow either.[1]

2. May a confessor ask the name of an accomplice?

In the Constitution *Apostolicæ Sedis* the first of the excommunications reserved to the Holy See is incurred by those who teach or defend as lawful the practice of inquiring from penitents the name of an accomplice in sin as the practice was condemned by Benedict XIV. The practice then is in general unlawful. However, as Benedict XIV himself supposes, there are certain cases in which the penitent is bound to denounce an accomplice, and sometimes this can only be done to or through a confessor, who may then ask the name of an accomplice.[2]

3. The case. The good of the college requires that the boy who corrupts his school fellows should be denounced

[1] Bucceroni, vol. ii, n. 720.

[2] Ibid., 1178 ff.

to the authorities when this is necessary to prevent future grave sins. This could only be done in the circumstances of the case by Albert himself. He was therefore under a grave obligation of doing this, and could not be absolved if he refused to do it. As he absolutely refused to denounce his accomplice personally to the authorities, but was not unwilling to tell the confessor, to whom he also gave leave to mention the matter to the authorities, the confessor may ask him to write the boy's name on a slip of paper and put it in an envelope and give it to him, and that he will see that it goes to the authorities. In doing this the confessor would do nothing wrong, but only help the boy to do his duty.

## 25

### A RECIDIVIST

Caius juvenis catholicus qualibet hebdomada confiteri solet. Quamvis alioquin bonæ dispositionis, semper se accusat peccati mollitiei admissi ter quaterve intra hebdomadam. Interrogationibus confessarii respondit se continere consuevisse per duos fere dies post confessionem, postea vero cadere; se dolere multum de peccatis, velle sincere se eripere e pravo habitu, et libenter consilia et media se emendandi a confessario accepturum. Unde quæritur:

1. Quis sit recidivus?
2. Quomodo tractandus?
3. Quid ad casum?

#### Solution

1. Who is a recidivist?

A recidivist is one who after many confessions has fallen into the same sin without any or with scarcely any amendment.

2. How is a recidivist to be treated?

This is a much controverted point among more recent moral theologians. The Jansenists taught that a recidivist can not be absolved until he has proved the sincerity of sorrow by actual amendment and by abstaining from falling again into the same sin for some time after con-

fession. On the other hand laxists held that a penitent who has contracted a habit of sin should be absolved at once, provided that he makes verbal profession of his sorrow and purpose of amendment. Even some who are neither rigorists nor laxists hold that after a recidivist has been absolved a certain number of times, he may not be absolved again unless he shows extraordinary signs of sorrow. The doctrine of Lugo and other older theologians on this matter seems more workable and better grounded. In brief it comes to this: that the matter must be left to the judgment of the confessor, and if the confessor judges that the penitent is here and now sorry for his sins, notwithstanding his falls in the past, he may always absolve him.[1]

3. The case. The fact that Caius keeps from sin for some time after going to confession shows that he derives fruit from the sacrament and he should not be deprived of it. He may be told to come to confession immediately after falling into sin if he can do so; to pray hard and perseveringly especially in time of temptation to God and His blessed Mother for help; to go frequently to Holy Communion; to keep constantly occupied in mind and body; to take plenty of fresh air exercise; and similar means. With God's grace, if he adopts these remedies he will conquer his bad habit. The confessor should do all he can to cheer and encourage him.

[1] Manual of Moral Theology, vol. ii, 218 ff.

## 26

## A LONDON ACTRESS

Caia actrix scenica (*actress*) satis celebris in quodam theatro Londinensi Lucio sacerdoti singulis fere mensibus confiteri solet. Inter alia peccata semper occurrunt quædam cum juvenibus commissa quos vix aut ne vix quidem evitare potest quum in ipso theatro eam quærant. Optimæ indolis Caia Lucio videtur, et peccare propter occasiones ac fragilitatem potius quam ex malitia; quo magis anxius est ut sciat quid sibi faciendum tum quoad absolutionem dandam, differendam, vel negandam, tum ut Caiam a pravo habitu eripiat. Unde quæritur:

1. Quomodo differant occasionarius, consuetudinarius, recidivus?

2. Num et quæ regulæ dari possint quoad absolutionem recidivorum?

3. Quid ad casum?

### Solution

1. How do the terms *occasionarius*, *consuetudinarius*, *recidivus*, differ?

An *occasionarius* is one who is placed in a proximate occasion of sin; a *consuetudinarius* is one who has contracted a habit of sin; a *recidivus* is one who after many confessions falls again into the same sin without any or with scarcely any amendment.

2. Can any rules be given with regard to absolving recidivists?

Some theologians descend into minute particulars on this point and give a great many rules of great complexity. Those given by Lugo are practical and short. They are these:

*a.* If a confessor judge a penitent notwithstanding a past habit of sin, to have here and now a true sorrow and a firm resolve not to sin again, he can absolve him.

*b.* But in the second place it is certain that when a priest, considering the past habit of sin, the propensity to it, and other circumstances, can not judge the penitent to be sufficiently averse from the sin, he can not absolve him, however much the penitent asserts that he is sorry.

*c.* It will help toward forming a judgment about the present dispositions of the penitent if he show special signs of sorrow.

*d.* Finally it will sometimes be useful to put off absolution for some days.[1]

3. The case. As was said above (p. 212) one who after many confessions falls again into the same sin without any or scarcely any amendment, may always be absolved by the confessor if he judges that the penitent is here and now sorry for his sins and purposes to correct them in future. Caia seems to be such a penitent, and so Lucius may absolve her. He has no right to deny her absolution, and it would probably do more harm than good if he were to defer it for a time. However, he may and should suggest means by which she may be able to avoid sin. We presume that she neither does nor says anything wrong in the course of her acting. The only remedy

[1] Manual of Moral Theology, vol. ii, 219 f.

to suggest if the contrary were the fact would be to stop it. We suppose that her duties are not wrong in themselves, but that they furnish the occasions of sin to her. It would be a good thing if she could abandon her profession and take up another which would be less dangerous. If she can not do this, the confessor might suggest that Caia should always have her mother, or sister, or lady friend with her in the theatre. She should attend to her prayers, go to the sacraments every week if she can, and if she gets a good offer of marriage she should accept it and retire from the stage.

## 27

### A LOOSE PRINCIPLE

Petrus et Paulus operarii fumum herbæ nicotianæ ducebant prope fenilia Jacobi, cui olim inserviebant, sed qui eos injuste dimiserat. Casu inopinato sulphurata ardentia inter fœnum inadvertenter projecerunt. Itinere paululum producto, respicientes viderunt igniculum e feno oriri. Propter veterem inimicitiam erga Jacobum, et eo quod alter alterum increpavit de incendio excitato, neuter pedem movit ad Jacobum monendum de periculo imminenti, ac proinde irriti fuerunt conatus concurrentium ad ignem extinguendum, et fenilia perierunt. Postea Petrus cogitans de Paschali præcepto implendo, ad Caium confessarium accedit, et exquirens præsertim de obligatione restitutionis refert dimidium valoris rerum quæ perierant a societate assecurationis jam solutum esse, et Jacobum terrefactum ad extremum pene vitæ reductum, pristinam sanitatem tandem recuperasse, at non sine magnis expensis contractis. Caius vero eum ab omni onere restitutionis excusat, uti alias semper, quia ut ait, semper adest aliqua causa quæ restitutionis obligationem saltem dubiam reddit; lex vero dubia non obligat. Unde quæritur:

1. Quæ sint conditiones ut actio damnosa pariat obligationem restitutionis?

2. Quid si confessarius indebite obligaverit vel solverit a restitutione facienda?

3. Quid ad casum?

SOLUTION

1. What conditions are necessary that an obligation to make restitution may arise from an action which causes damage?

There must be theological fault, the damage must be really and objectively unjust, the action must be the cause, not merely the occasion, of the damage.[1]

2. What if a confessor has improperly imposed the obligation of making restitution, or improperly exonerated a penitent from it.

If this was done without grave theological fault, the confessor will be bound to correct his mistake and prevent harm coming from it as far as he can. If his action involved grave fault on his part, either through grave negligence or malice, he becomes a co-operator in injustice, and is bound to make good the harm done to his penitent or to a third person by his wrong conduct.[2]

3. The case. Caius' principle is certainly false, and will be the cause of his doing serious harm if he continues to apply it in practice. Still in the case before us it did not cause him to go astray. Peter and Paul inadvertently threw lighted matches among James' hay, and after they had left the spot they looked back and saw that a small fire had been kindled. The one who had caused the fire was bound in justice to do his best to put it out, otherwise he would be compelled to make good the damage. But they did not know who had caused the fire; it was uncertain whether it was caused by Peter, or by Paul, or by both of them. On account of this doubt neither of them can

[1] Manual of Moral Theology, vol. ii, 408 ff.

[2] Ibid., 226 f.

be compelled to make good the damage done, although both committed sins against charity by their ill-will against James and by neglecting to extinguish the fire at first. The damage done to James' health was not foreseen, nor was the expense foreseen which he incurred on that account, and so no obligation to make restitution could arise on this ground.

## 28

## REQUISITE KNOWLEDGE IN THE CONFESSOR

Paulus sacerdos per plures annos studium theologiæ moralis fere omnino prætermisit. Aliquoties quidem instante collatione theologica ut nonnihil habeat quod dicat auctores cursim perlustrat, excepto forte cum sibi contingit casum proponere. Quoad casus communiter occurrentes nescit utrum solutionem semper sciat; et quoad casus difficiliores suspicionem non levem habet se vix satis scire ad dubitandum de solutionibus. Si forte casus occurrerint investigationem exigentes detexit res magni momenti oblitas de impedimentis matrimonii, de conditionibus contractuum præsertim venditionis et emptionis, atque de radicibus restitutionis. Caius confessarius cui Paulus hæc omnia aperit absolutionem denegat, nisi, uti docet S. Alphonsus, promittat se studium illud nunquam intermissurum. Quæritur:

1. Quænam scientia sub gravi in confessario requiratur?

2. An possit confessarius post plures annos satis memoriæ fidere de scientia theologiæ olim in seminario acquisita, quin tamen illa per studium refricetur?

3. Quid de casu?

(Ex casibus diœcesis Liverpolitanæ pro annis 1898-1899.)

### Solution

1. What knowledge must the confessor have *sub gravi?*

The confessor must know how to administer the sacrament of penance validly, and he must have the knowledge required to give a prudent judgment in this tribunal. For this purpose he must know: "Quæ sint mortalia, quæ venialia, saltem ex genere suo; species et circumstantias necessario explicandas; spectantia ad restitutionem bonorum et famæ; casus reservatos et excommunicationes saltem communiores; censuras et irregularitates communiores; requisita in pœnitente ad bonam dispositionem; remedia peccatorum opportuna. Satis est si confessarius intelligat quæ frequentius accidunt et de aliis sciat dubitare." [1]

2. Can a confessor after many years trust his memory about what he learned in the seminary without refreshing it by study?

No, he certainly can not do so. Daily experience teaches most men how readily things once known drop out of memory, and most priests know how easy it is to forget the principles of moral theology unless they are kept fresh by constant study.

3. The case. Caius, the confessor of Paul, who also was a priest, was quite right to threaten the withholding of absolution from him unless he promised to keep up the study of moral theology. It is clear from the case that he was deficient in that knowledge which theologians require *sub gravi* in a confessor. He was not sure about the right solution of ordinary cases, and he had grave suspi-

[1] St. Alphonsus, Theol. Moral, lib. vi, n. 627.

cions that he did not know enough to doubt more about difficult cases. Occasionally, when he found it necessary to look into matters, he found that he had forgotten things of great importance about the impediments of marriage, the conditions of contracts, especially of sale, and the roots of restitution. All these are indeed matters of importance, and of frequent occurrence, and Paul should lose no time before refreshing his memory about them; otherwise he will not escape serious sin.

## 29

## THE SEAL NOT BROKEN

Titius confessarius alumnorum in quodam collegio Catholico quum ex confessione scivisset quemdam puerum pravis moribus imbutum alios ad gravia peccata pertrahere, eorumdem Præfectum admonuit ut diligentius super gregem ipsi commissum invigilaret. Præfectus vero etiam sacerdos nec prorsus peregrinus in theologia morali dubitabat num sibi uti notitia data liceret. Unde quæritur:

1. Ad quid obliget secretum sigilli et qua lege statuatur?
2. Num uti liceat scientia habita ex confessione?
3. Num superioribus liceat uti dicta scientia in externa gubernatione?
4. Quid ad casum?

### Solution

1. To what does the secret of the seal bind and by what law?

By divine, natural, and positive law the confessor is bound to say or do nothing which could make known any sin, or circumstance connected with sin, confessed to him, or which would cause the penitent reasonable displeasure, or make confession more burdensome than it is.[1]

2. Is it allowed to make use of knowledge gained from confession?

[1] Manual of Moral Theology, vol. ii, 231.

Of course, such knowledge must not be so used as to violate the seal. Otherwise the confessor may use knowledge gained from confession to correct his own faults, to preach and to hear confessions with more fruit, to treat his penitents and others with greater kindness.[1]

3. May Superiors use knowledge gained from confession for the government of their subjects?

No, this may not be done, as it would make confession odious, and cause displeasure to penitents. The contrary opinion was virtually condemned by a decree of Clement VIII, May 26, 1593, and another of the Holy Office, Nov. 18, 1682, and it is now obsolete.[2]

4. The case. Titius, of course, was not justified in doing what he did if any suspicion was likely to fall on the culprit in consequence of what he said. If what he said to the prefect would betray neither the delinquent nor anything that had been told him in confession, it would seem that Titius was not to blame, and that the prefect may follow his admonition without scruple. St. Alphonsus says: "Communiter tamen admittunt posse confessarium uti notitia confessionis ad se cautiorem reddendum in re familiari, ad socordiam excutiendam, ad diligentius invigilandum super gregem suum, modo nulla detur aliis suspicio peccati, neque ex hoc pœnitens gravetur, vel implicite redarguatur. . . ex D. Thoma in IV, d. XXI, q. 3, a. 1, q. 3 ad 1, ubi ait: 'Potest (confessarius) dicere prælato quod diligentius invigilet super gregem suum, ita tamen quod non dicat aliquid per quod verbo vel nutu confitentem prodat.'"[3]

[1] Manual of Moral Theology, vol. ii, 232.

[2] Ibid., 232.

[3] St. Alphonsus, Theol. Moral., lib. vi, 657.

## 30

## CONFESSION WITH UNEXPECTED RESULTS

Caius et Tullia, jam ab aliquibus mensibus sponsati, ad confitendum Titio sacerdoti, qui sedebat in confessionali ligneo in Ecclesia exposito, Caius ab hac parte Tullia ab illa simul iverunt. Primus incepit Caius qui quidem se accusavit inter alia fornicationis pluries admissæ cum variis feminis. Totam Caii confessionem audivit non modo Titius sed etiam Tullia, quippe quum foramen relictum esset apertum ex utraque parte confessionalis. Post absolutionem datam Caio Titius se convertit ad Tulliam, quæ primo explicat se fuisse quidem Caio sponsatam, nullo tamen modo post audita velle ei nubere, quinimmo odium contra eum concepisse asserit. Unde quæritur:

1. Quænam justæ causæ resiliendi a sponsalibus admitti possint?

2. Quatenus et qua lege prohibeatur usus scientiæ acquisitæ ex confessione sacramentali?

3. Quid ad casum?

### Solution

1. What just causes for breaking off an engagement to marry may be admitted?

An engagement to marry may be broken off by mutual consent, by the happening of an event which would have

prevented the engagement if it had happened before it, by entering into a Religious Order or by taking sacred Orders, and by the Pope for good reason.[1]

2. This question was answered above, p. 222.

3. The case. Tullia of course did wrong in listening to the confession of her betrothed. She should have gone out of the confessional or called the attention of the priest to the fact that the grating was not closed. Having heard the confession, she is *per se* bound like the confessor not to allow the knowledge which she has gained to influence her conduct. She probably does not know this, and certainly she does not seem able to control her feelings. Women were never intended to be confessors. Caius will hear immediately of what has happened, and he will probably be content to release Tullia from her engagement, as under the circumstances the marriage could hardly turn out well.

[1] Manual of Moral Theology, vol. ii, 260 f.

## 31

### UNLAWFUL USE OF CONFESSIONAL MATTER

Caius sacerdos post confessionem Titio sacerdoti factam rogat utrum recte in sequentibus casibus fecisset. Caius curam gerit orphanorum utriusque sexus et rogatus ut mitteret puerum quindecim annorum ad officium quoddam suscipiendum selegit quemdam pravis moribus imbutum qui ceteros corrumpebat ut ex confessionibus sciebat, aptum, tamen ad officium gerendum quamvis alii æque apti essent, apud se dicens absentiam pueri ipsi et ceteris orphanis profuturam. A sacerdote coadjutore rogabatur ut mitteret puellam sexdecim annorum quæ famularetur viro conjugato et Catholico, qui tamen ut Caius ex ejus confessionibus cognoscebat omnes juvenes famulas corrumpere solebat. Negabat se id facere posse, quamvis plures essent loc: idoneæ. Quæritur:

1. Quid sit et unde oriatur secretum sigilli?
2. Quomodo violetur secretum sigilli?
3. Quale peccatum committat sigillum violans?
4. Quid a Titio respondendum?

#### Solution

The first question was answered above, p. 222.

2. How is the seal of confession violated?

The seal may be violated either directly or indirectly. It is violated directly when the confessor says that such a penitent told him such a sin in confession. It is violated indirectly when the confessor says or does anything, or

abstains from saying or doing anything, from which others may come to the knowledge of confessional matter, or by which the penitent may be aggrieved or confession made odious.[1]

3. What sort of a sin is it to violate the seal?

It is a grave sacrilege against justice and charity, nor does direct violation admit of light matter although indirect violation does when the danger of revelation of confessional matter is slight and remote.[2]

4. What should Titius answer?

Titius should tell Caius that he was not justified in making use of knowledge gained in the confessional to guide him in his treatment of the orphans. In neither case, it is true, did Caius make known anything that he had heard in the confessional, but it might happen that in such a case as the first the penitent would be aggrieved by being sent away from the orphanage, and if it were known that such use was made of the confessional it would make confession more difficult and odious. This test seems decisive: What would be the effect on penitents if they knew that the confessor used knowledge gained from confession in the manner indicated in the first case? If it were taught that such use of knowledge gained in the confessional is lawful, the duty of confession would certainly be made more difficult, and this is a proof that such action is a violation of the seal. In the second case the confessor's action tends obviously to the displeasure and disadvantage of the penitent. He should have tried to correct his penitent's morals, and thus safeguard the virtue of his orphans.

[1] Manual of Moral Theology, vol. ii, 231.
[2] Ibid., 229.

## 32

## A USELESS DEVICE

Caius et Paulus sacerdotes eidem missioni inserviunt. Venit ad confitendum Caio pœnitens quidam qui hactenus Paulo est confessus. Difficultates haud leves Caius sentit de confessionibus dicti pœnitentis et de modo convenienti eumdem tractandi. Quum vero Caius non possit extra confessionem cum Paulo de pœnitentis casu colloqui ob sigillum sacramentale, aperit eidem in confessione post propria peccata confessa suas difficultates de casu dicto, et Pauli consilium petit. Unde quæritur:

1. Quænam sit et unde oriatur obligatio sigilli confessionis?

2. Quibus modis violari possit?

3. Quale peccatum sit violatio sigilli?

4. Num unquam liceat uti scientia habita ex confessione?

5. Quid ad casum?

### Solution

The first question is answered above, p. 222, the second, p. 226, the third, p. 227, the fourth, p. 223.

5. The case. As Paulus would recognize the case at once, Caius was not at liberty to consult him either out of confession or in confession. The fact that Caius had made his confession did not give him permission to commu-

nicate to Paulus what he had heard in confession when Paulus would at once recognize who the penitent was. The seal is broken when two confessors speak together of the sins of a penitent of both of them.[1] Caius should have waited till he could consult some one who would not know the penitent.

[1] Manual of Moral Theology, vol. ii, 232.

# ORDERS

## 1

## ANGLICAN ORDINATIONS

Caius recenter ad fidem Catholicam conversus et qui sæpe amicis hæreticis rationem fidei reddere tenetur rogat confessarium quid sit respondendum difficultati propositæ recenter contra Bullam *Apostolicæ curæ*. Quidam enim in *Contemporary Review*, Dec. 1896, ita scripsit: "The theological argument is very nebulous. Its defenders are not sure of its meaning. As every one knows, the English ordinations are declared invalid on account of defective form and intention. A French writer has shown that the defect of intention is inferred from the use of a defective form. But English critics of the Bull have shown that what is lacking in our form is lacking also in other forms which are recognized as valid by the Roman Church; indeed in the ancient Roman form itself. Father Bernard Vaughan replies hotly that the fault is attributed not to the form in itself, but to the employment of the form in a new and defective sense. That is to say, the defect of form results from a defective intention. The two arguments combined will make an excellent circle." P. 796. Unde quæritur:

1. Quid sit sacramentum, et quid essentialiter requiratur ad ejus valorem?

2. Qualis mutatio sufficiat ad invalidandum materiam vel formam sacramenti?

3. Quomodo Bulla *Apostolicæ curæ* demonstret ordinationes Anglicanas esse invalidas?

4. Quid respondendum breviter Caio?

### Solution

1. What is a sacrament and what is essential to its validity?

A sacrament is an outward sign of inward grace ordained by Christ for the sanctification and salvation of our souls. Three things are necessary for the validity of a sacrament: the matter, the form, and the minister who makes the sacrament with the intention of doing what the Church does.[1]

2. What sort of a change is sufficient to invalidate the matter or form of a sacrament?

If a substantial change be made in the matter or form of a sacrament, the sacrament is destroyed. The matter will be substantially changed if in the estimation of ordinary men it is no longer the same, but something else. The form will be substantially changed if the sense is no longer the same.[2]

3. How does the Bull *Apostolicæ curæ* show that Anglican ordinations are invalid?

By appealing to precedent and by showing that the form and intention expressed in the Anglican Ordinal are essentially defective. From the time of the legation of Cardinal Pole to England, Orders conferred according

[1] Manual of Moral Theology, vol. ii, 21.
[2] Ibid., 22.

to the Anglican Ordinal have always been considered invalid by Rome; all references to the power of consecrating the Eucharist and offering up the Sacrifice of the Mass were excised from the ordination rite, thus showing a want of intention to ordain true priests.

4. A brief answer to Caius. The theological argument of the Bull is clear, and Catholics have no difficulty about its meaning. The defect of intention is not inferred from the defective form, but it is clearly expressed in the changes made in the form for the purpose of cutting out all references to a sacrificing priesthood, which the reformers rejected. There is a great difference between a form which has been altered with the intention of excluding all express references to a sacrificing priesthood, and a form which has not been so altered. The Bull shows that the Anglican Ordinal belongs to the first class, and that thus it has been rendered invalid, whatever might be said of its sufficiency in itself. From this it is clear what the Bull means by defective form and intention, and that it does not argue in a circle.

## 2

## A PRIEST'S SUPPORT

Titius missionis Rector quum tempore perturbationis politicæ pensionem debitam non reciperet, missionem cui præfectus erat deseruit, eo quod nemo gratis laborare tenetur, licet confessarius renuerit dicendo: Innocentes oves lupo a pastore tradi non debere. Tunc episcopus quum supervacaneam dedisset operam ut Titius ad missionem rediret, in virtute sanctæ obedientiæ sacerdotem animarum curam non habentem fugientis Rectoris vices gerere jussit; sed is quoque obedire renuit. Hinc quæitur:

1. Num sacerdotes seculares habeant jus ad sustentationem accipiendam?

2. An residentiam deserere possit curatus ex eo quod pensionem debitam non percipiat?

3. Quænam sit vis juramenti Apostolici ab Angliæ presbyteris communiter emissi?

4. Quid de sacerdotibus in casu?

Casus fuit propositus in diœcesi Northantoniensi, 1901?

### Solution

1. Have secular priests a right to their decent support?

Yes, the Church forbids any one to be promoted to sacred Orders without a title, *i.e.*, a provision for his decent support. If a bishop culpably ordains a priest without

a title, the bishop is bound to provide for his support until he can provide for himself.[1]

2. Can one who has the cure of souls abandon his charge because he does not receive the pension which is due to him?

I will answer in the words of Gasparri: "Recepto autem presbyteratu sacerdos ita diœcesi ad quam pertinet incardinatur, ut discedere nequeat sine licentia, seu sine litteris, ut aiunt, excardinationis sui Episcopi. Episcopus potest discedendi licentiam denegare, dummodo sacerdoti congruam assignet. Quod si episcopus et licentiam deneget et congruam nequeat aut nolit assignare, sacerdos non ideo potest sua voluntate discedere, sed recursum habet ad Sacram Congregationem. Discedentem sine sua vel S. C. licentia episcopus revocare potest etiam per censuras, etiamsi sacerdos beneficium residentiale in alia diœcesi obtinuisset. Hæc doctrina certissima est eamque sæpius tradidit S. C." (De Sac. Ordin., n. 860).

3. What is the force of the Mission oath commonly taken by English priests?

By the terms of the Mission oath the cleric swears that he will not enter into any Religious Order after he is promoted to sacred Orders without special leave of the Holy See. He further swears that he will work for the salvation of souls in the diocese for which he is ordained, under the authority of the bishop. The formula of the oath is given in Concilia Westmon., p. 385.

4. The case. Titius should not have abandoned his post. He should have applied to the bishop whose duty it was to try to make provision for the decent support of Titius, and if this could not be done, to remove him to

[1] Gasparri, De Sacra Ordin., n. 612.

another post. Even if the bishop improperly refused to do anything for him, Titius should not have left the place, but should have appealed to Rome. The other priest on being ordered by his bishop to fill the vacancy was bound to obey, and he sinned in not obeying; but he also had a claim on the diocese for his decent support if he had no other title.

# EXTREME UNCTION

## 1

## REPETITION OF EXTREME UNCTION

Caius missionarius tempore Paschatis invisit vicum quemdam ab ecclesia quinque vel sex millia passuum distantem ubi degunt aliqui Catholici. Ibi occurrit familiæ Catholicæ antea ignotæ cujus membra nunquam vel ob distantiam vel ob negligentiam ad ecclesiam veniunt. Materfamilias quadraginta fortasse annorum evidenter phthisi laborat quamvis non decumbit, imo ordinariis occupationibus vacat. Quæ quum dicat se non posse ob occupationes domesticas ad ecclesiam venire, eam monet Caius ut proximo mane sit domi parata ad Paschalia sacramenta recipienda; cui annuenti ipse mature proximo die pœnitentiam, communionem, et Extremam Unctionem, successive administrat. Post octo menses ad eamdem mulierem jam morientem vocatur, quam cum invenit sensibus destitutam et in ipso mortis articulo, sine mora inungit iterum in fronte sub forma generali, et paulo post mulier expirat. Unde quæritur:

1. Quinam sit subjectum Extremæ Unctionis?
2. Num Extrema Unctio repeti in eadem infirmitate possit?
3. Quid de modo agendi Caii in omnibus?

### Solution

1. Who is the subject of Extreme Unction?

To receive Extreme Unction validly one must be baptized, have attained the use of reason, and must be in probable danger of death from sickness.[1]

2. May Extreme Unction be repeated during the same sickness?

The Ritual lays down that this sacrament ought not to be repeated in the same sickness, unless it is prolonged, as when the sick man has got better and he is again brought into the danger of death. Many approved authors hold that in practice it may be repeated after a month's interval.[2]

3. What about the actions of Caius?

Caius found a mother of a family who never came to church, partly on account of distance, partly on account of negligence. She was now far advanced in consumption, but still attending to her household duties. He told her to prepare herself to make her Easter next morning, and then came again to the house and administered Penance, the Eucharist, and Extreme Unction. There is little difficulty about the administration of Penance. It is forbidden to take Holy Communion out of the Church except to the sick. The woman in question was apparently sufficiently ill for Easter Communion to be brought to her. Extreme Unction should not be given except to the sick who are in danger of death. If Caius judged that the woman was probably in danger, he did right to administer Extreme Unction, otherwise he did wrong.

[1] Manual of Moral Theology, vol. ii, 238.

[2] Ibid., 238.

Eight months afterward Caius was called to the same woman and found her dying in a state of unconsciousness. He anointed her on the forehead with the general form, and then she died. Caius should first of all have given her conditional absolution, for Penance should always precede Extreme Unction, as this sacrament is the complement of Penance. He did right after such an interval to repeat Extreme Unction, for although the sickness was the same, still without doubt there had been a change in the sick person's state.[1]

[1] Génicot, vol. ii, n. 423.

## 2

## SHORT FORM FOR EXTREME UNCTION

Sanctum Officium rogatum ut formam brevem determinaret pro extrema unctione in necessitate administranda, 26 Aprilis 1906, decrevit: "In casu veræ necessitatis sufficere formam: Per istam sanctam unctionem indulgeat tibi Dominus quidquid deliquisti. Amen." Post quod decretum quidam docent in casibus in quibus forma ista adhibeatur postea sub conditione si tempus permittat juxta formam ritualem unctionem esse repetendam; alii id posse fieri nullam vero adesse obligationem idem faciendi; alii id fieri non debere sustinent. Titius vero sacerdos qui quum nosocomio publico inserviat non raro brevem formam adhibeat perplexus inquirit quid a se sit faciendum. Unde quæritur:

1. Ante dictum decretum editum quid de forma essentiali extremæ unctionis docuerint theologi?

2. Quid et quacum certitudine idem decretum determinaverit?

3. Quid ad casum?

### Solution

Before the decree of the Holy Office, 26 April, 1906, what did theologians teach about the essential form of Extreme Unction?

The ritual form of Extreme Unction is: "Per istam sanctam unctionem et suam piissimam misericordiam

indulgeat tibi Dominus quidquid per visum, etc., deliquisti. Amen." Theologians taught that in this form the words *et suam piissimam misericordiam, sanctam Amen,* did not belong to its essence. They did not agree as to whether the mention of the senses in special or at least general terms belonged to its essence. They differed also as to whether a single anointing was sufficient or not for the validity of the sacrament. Hence they taught that in a case of necessity Extreme Unction might be given conditionally with one form such as: *Indulgeat tibi Deus quidquid per sensus deliquisti.* Others required all the senses to be expressed in the single form. If the sick man survived, St. Alphonsus teaches that the anointing of each sense and the prayers were to be supplied.[1]

2. What did the decree determine and with what certainty?

The Holy Office was asked to determine a single short form for the administration of Extreme Unction to be used in case of death being imminent. It decided that the following form would be sufficient: "In casu veræ necessitatis sufficere formam: Per istam sanctam unctionem indulgeat tibi Dominus quidquid deliquisti. Amen." This decree was confirmed next day by Pius X. Hence it determines authentically but not infallibly that in case of necessity it is not necessary to mention the different senses nor even one, and that one anointing under this general form is sufficient for the validity of the sacrament.

3. The case. This decree tells us what is sufficient for the validity of Extreme Unction *in casu veræ necessitatis,* when there is not time to perform the full rite according to the Ritual. If the sick person thus anointed

[1] St. Alphonsus, Theol. Moral., lib. vi, n. 710.

survives, and there is time to go through the Ritual form and prayers, then the case is one not contemplated in the decree. We think, then, that the first opinion mentioned is to be followed in practice, and that if time allows and the state of the sick person permits it, the sacrament should be given according to the form prescribed by the Ritual after this short form has been used. This is the opinion of the Redactor of the Acta Sanctæ Sedis when the decree was issued. He says: "Sed cessante periculo præsertim si ægrotus alia sacramenta secure suscipere non potuit, sub conditione repetendæ sunt singulæ unctiones in singulis sensibus, sub suis particularibus formis, atque addendæ simul sunt omnes orationes omissæ. Quæ norma apprime congruit præscriptīonibus Ritualis Romani, et quatenus melior fiat dispositio suscipientis sacramentum, ad majus gratiæ augmentum obtinendum concurrit." (A. S. S., XXXIX, 275.)

# MATRIMONY

## 1

## INFORMAL BETROTHAL

Titius missionarius sacerdos vult scire utrum vi decreti *Ne temere* S. C. C., Aug. 2, 1907, promissio matrimonii mutua, seria, et deliberata, inter habiles, non tamen in scriptis, sit nullius momenti, an potius nonobstante decreto vim contractus privati sub gravi in conscientia obligatorii habeat. Præterea rogat utrum sub parochi nomine in citato decreto comprehendantur non solum sacerdotes principales in aliqua missione sed et eorum coadjutores si qui habeantur. Unde quæritur:

1. Quinam sit scopus decreti *Ne temere?*
2. Quid statuat istud decretum circa sponsalia?
3. Qualem potestatem habeant missionarii in Anglia coadjutores?
4. Quid de difficultatibus Titii?

### Solution

1. What is the scope of the decree *Ne temere?*

The scope of this decree was to alter the law about clandestinity so as to remove its uncertainties as far as possible, and to prevent the evils which frequently arise from private and informal betrothals. (Procemio decreti *Ne temere.*)

2. What does the decree lay down about betrothal?

"Only those betrothals are considered valid and produce canonical effects which have been contracted in writing signed by both the parties and by either the parish priest or the ordinary of the place or at least by two witnesses. In case one or both the parties be unable to write, this fact is to be noted in the document and another witness is to be added who will sign the writing as above, with the parish priest or the ordinary of the place or the two witnesses" (Sect. 1).

3. What authority have coadjutor missioners in England?

They are delegated by the bishop to exercise the cure of souls, but according to the Provincial Councils and the declared intention of the bishops, they must exercise it in depèndence on the head priest.[1]

4. What about the difficulties of Titius?

One of the objects of the new law was to prevent the inconveniences arising from mutual promises of marriage privately entered upon. For as the decree says: "Experience shows that they are an incitement to sin, causing the deception of inexperienced girls, and afterward giving rise to inextricable dissensions and disputes." The first section of *Ne temere,* therefore, provides that "only those," etc., as above. This section would be valueless for the object in view unless it invalidated betrothals made otherwise than is laid down. So that we must conclude that betrothal not made according to the decree has no binding force directly and of itself. The S. C. super neg. eccles. extraord., 5 Nov. 1902, decided that informal betrothals were invalid in conscience and in law in Spain and in Latin America, where a similar law

[1] Manual of Moral Theology, vol. i, 630.

to *Ne temere* has long been in force. This doctrine is maintained by most commentators, *e.g.*, by Gennari, Ojetti, Vermeersch, Ferreres, Besson.

The term parish priest comprises the coadjutors as well as the head priest, but the former are bidden to exercise their authority in dependence on the head priest; *cum dependentia a Rectore.*

## 2

## AN ACTION FOR BREACH OF PROMISE

Titius familiæ divitis filius matrimonium serio sed verbis et litteris amatoriis tantum Catharinæ honestæ puellæ promisit. Per duos annos Catharina eum admisit ad familiaritatem inter sponsos consuetam, quum ejus amor refrigescere inciperet ac post aliquot menses matrimonium cum Bertha multo Catharina ditiore contraxit. Catharina relicta vix spem aut desiderium alterius sponsi habet at confessarium rogat utrum tuto in conscientia actionem contra Titium de promissione fracta intentare valeat quum non aliter habeat unde honeste sustentetur. Unde quæritur:

1. Quid requiratur ut sponsalia sint valida?
2. Num ex sponsalibus informibus ulla obligatio oriatur?
3. Siquod jus ex sponsalibus informibus oriatur num illud prosequi in curia civili liceat?
4. Quid ad casum?

### Solution

1. What is required for valid betrothal?

The decree *Ne temere* lays down that: "Only those are considered valid and produce canonical effects which have been contracted in writing signed by both the parties and by either the parish priest or the ordinary of the place, or at least by two witnesses."

The second question was answered above, p. 244.

But here it must be borne in mind that although no obligation arises directly from informal betrothal in itself, yet obligations do arise indirectly from such betrothal when they are the cause of serious injury to another. There is always an obligation in justice to make reparation for wilful and culpable injustice done to another.

3. If any right arises from informal betrothal may an action be brought in the civil courts?

*Per se* questions about marriage and betrothal belong to the ecclesiastical courts. But in countries like England and the United States where no legal force is recognized in ecclesiastical sentences of the Catholic Church, certain cases may be brought into the civil courts which would otherwise have to be tried in the ecclesiastical courts.[1] In cases especially where the injury is not doubtful, and the only practical question is one of damages claimed for the injury, there seems no objection against applying to the civil courts.

4. The case. Catherine has a right to damages for the cruel deception that was practised on her, and for the ruin of her prospects, although the betrothal was not valid in itself. English law gives her a right of action in such a case, and the Church certainly does not wish to deprive her of it. Her confessor, therefore, may tell her that she is perfectly justified in suing Titius for damages for breach of promise in the civil court.

[1] Manual of Moral Theology, vol. ii, 282.

## 3

## A PROMISE CONFIRMED BY OATH

Titius Catholicus familiaritatem cum Titia pariter Catholica contraxit. Quodam die tentatione victus Titius inducere Titiam ad peccandum secum voluit. Resistenti Titiæ promisit etiam sub juramento se postea eam in uxorem ducturum, quibus auditis Titia in fornicationem consensit. Post aliquot menses prægnans effecta Titia impletionem promissionis juratæ urgere incœpit; quum vero Titius nunc melius ejus dispositionem cognoscat nec propter ejus asperitatem spem ullam de vita maritali cum ea felici habeat, quum etiam amor suus refrixisset, quærit a confessario utrum promissioni juratæ stare teneatur. Unde quæritur:

1. Num obligent sponsalia jurata quamvis non scripta?
2. Ad quid et quomodo sponsalia obligent?
3. Quomodo sponsalia dissolvantur?
4. Quid ad casum?

### Solution

1. Does a sworn promise to marry bind when it is not in writing?

An unwritten promise to marry is made null and void by the decree *Ne temere*, and what is invalid can not be made valid and obligatory by adding an oath—accessorium sequitur principale.

2. To what and how does betrothal bind?

Valid betrothal binds the parties by a serious obligation of justice to fulfil the contract at the time fixed, or if no time was fixed, then at a reasonable time.[1]

3 How is betrothal dissolved?

Betrothal may be dissolved by mutual agreement of the betrothed, by the happening or detecting of a circumstance of importance by one of the parties which would have prevented him from making the engagement if it had happened or been known before, by embracing a more perfect state of life, by a dispensation of the Pope for good reason.[2]

4. The case. Neither the promise made by Titius nor the oath which he took are valid or obligatory in themselves. It was a *turpis contractus*, and moreover it was not in writing, and so it was invalid by the decree *Ne temere*. The oath as being accessory was also invalid. However, Titius by an invalid promise has induced Titia, who otherwise was unwilling, to commit sin with him, and she is now pregnant. She will be injured for life unless he marries her. He will be justified in offering her money and trying by other means to induce her to free him from his obligation to prevent harm following to her from his action. But if nothing but marriage will satisfy her and safeguard her reputation, Titius will be bound to marry her, unless indeed incompatibility of temper makes a happy marriage utterly hopeless.[3]

[1] Manual of Moral Theology, vol. ii, 256.

[2] Ibid., 260.

[3] Bucceroni vol. ii, n. 920.

## 4

## DEBTS OF BETROTHED

Titia vidua quæ promiserat se Paulo nupturam ad confessarium accessit eumque rogavit utrum manifestare sponso teneatur se debitis ad ducentas libras sterlinas esse oneratam nec habere unde solvat, timebat enim ne Paulus quum de debitis audiret a sponsalibus resiliret. Unde quæritur:

1. Quænam ex sponsalibus oriantur inter sponsos obligationes?

2. Num sponsa sponso defectus manifestare teneatur?

3. Quænam ex lege Anglica sint quoad debita uxoris obligationes mariti?

4. Quid ad casum?

### Solution

1. What obligations between the betrothed arise from betrothal?

They are bound in justice to keep their engagement and to marry at the time agreed on, or within a reasonable time; they are bound to live chastely; one party may not go and live at a distance so that intercourse becomes impossible without the knowledge and consent of the other.[1]

[1] Manual of Moral Theology, vol. ii, 256 ff.

2. Is one who is betrothed bound to make known to the other party any defect he has?

If one party labors under a secret defect which will be injurious to the other party after marriage, such secret defect should be made known to the other party. Otherwise, there will be no obligation to make it known, even though it would give the other party a right to break off the engagement if he should discover it.[1]

3. Is the husband liable for the debts of his wife?

A husband is liable for debts contracted by his wife as his agent for the supply of necessaries for herself and children; he is also liable for her torts committed during the coverture. At common law a husband was also liable upon his wife's contracts made before marriage, but by the Married Women's Property Act, 1882, the husband "sued jointly with his wife in respect of a cause of action arising against her before the marriage, is liable only to the extent of such assets as he received or might (but for his own default) have received with her; and if he received none, then he will have his costs of defence, and the judgment for the debt or damages will be separate against the wife, and may be satisfied out of the wife's separate estate, if she has any." [2]

4. The case. If the husband were liable for his wife's ante-nuptial debts, Titia should make known her indebtedness to Paul before the marriage, otherwise he will suffer serious injury and probable estrangement from her. Even as English law stands at present it will be advisable for Titia to tell her future husband what he will be pretty sure to find out for himself either before or after marriage. As

[1] Manual of Moral Theology, vol. ii, 262.

[2] Stephen's Commentaries, vol. ii, 377.

in the circumstances Paul would not be held liable for Titia's debt of £200, there is the less reason why he should not be told, although she is under no strict obligation to tell him.

## 5

## MATERNITY IMPOSSIBLE

Patricius semel et iterum petiit a Birgitta ut sibi nubere vellet; Birgitta licet interius minime invita nunquam quidem directum dedit responsum, ita vero se gessit ut vulgo haberetur pro desponsata. Accidit autem ut Birgitta graviter ægra cogeretur petere nosocomium, ubi suadentibus medicis subiit operationem nescio quam chirurgicam unde mox convaluit. Exeunti ex nosocomio obviam fit Patricius qui narrat sua negotia feliciter successisse nec jam opus esse ut nuptiæ amplius differantur modo velit Birgitta diem assignare Simul traditur Birgittæ epistola a nosocomii moderatrice jussu medicorum conscripta ubi hæc habentur: "Animo retinere debes, carissima, post istam operationem impossibile esse ut unquam mater fias." Birgitta prudenter se excusat quin statim responsum det Patricio et consulit confessarium de tota re. Quæritur:

1. Quid sint sponsalia et num credendum sit extitisse vera sponsalia inter Patricium et Birgittam?

2. Num supponendo Birgittam subiisse ovariotomiam perfectam ipsa effecta sit incapax matrimonii?

3. Num saltem Birgitta teneatur monere Patricium de lectis in epistola?

4. Quid ad casum?

### Solution

1. What is betrothal, and were Patrick and Bridget betrothed?

Betrothal is a mutual and lawful promise of future marriage between persons who may marry lawfully. As there was no written agreement between Patrick and Bridget there could be no question about their betrothal if all that passed happened after April 19, 1908. Before that date it would have been doubtful whether there was a true engagement between them.[1]

2. Was Bridget made incapable of marrying on the supposition that she had undergone complete ovariotomy?

The question is disputed among experts and at present no certain answer can be given to it. When a case arises, it should be referred to the bishop, who will consult the Holy See if he can not decide it himself.

3. Is Bridget at any rate bound to tell Patrick about her condition?

She certainly must not attempt to marry him without letting him know what the doctors have told her. The possibility of having children is the primary end of marriage, and if it has been made impossible by a surgical operation, the future husband has a right to know the fact, even on the supposition that valid marriage is still possible.[2]

4. The case. Whether the events narrated in the case took place before or after Easter, 1908, the confessor should tell his penitent that she should not marry before hearing from the bishop, to whom the case should be sent.

[1] Manual of Moral Theology, vol. ii, 251.

[2] Ibid., ii, 294.

The precise nature and effect of the operation should be learned if possible from the surgeons who performed it, and the details should be sent to the bishop, who in case of doubt will send them to the Holy See, so that a practical decision in the case may be arrived at.

## 6

## PARENTS AGAINST MARRIAGE

Caius juvenis Catholicus familiæ honestæ et mediocriter divitis, recenter locum directoris tabulæ argentariæ obtinuerat (*bank manager*). In oppido ubi degebat familiaritatem contraxit cum Titia, puella Catholica et honestæ quidem conditionis sed valde paupere. Caius et Titia brevi matrimonium sibi mutuo in scriptis promiserunt. Quod quum Caii superiores audirent sibi rem valde displicere indicaverunt Caii parentibus, quia directorem tali loco matrimonio præsertim tali conjungi noluerunt. Parentes ne loco dimitteretur filius eum prohibuerunt quominus matrimonium cum Titia iniret. Caius igitur litteris ad Titiam missis licentiam resiliendi petiit, responsum vero sat acerbum ab ejus matre accepit Titiam lacrimis continuis tabescere, ejusque confessarium dicere Caium sub gravi cito ad promissionem implendam teneri. Caius responso accepto ad suum confessarium accessit, qui rogat:

1. Quid sint sponsalia, quodnam jus pariant, quandonam implenda sint?

2. Num filiifamilias consulere parentes de matrimonio ineundo teneantur?

3. Num præcepto parentum ut sponsalia abrumpantur sit obtemperandum?

4. Quid ad casum?

SOLUTION

1. What is betrothal, what right does it give, when is it to be fulfilled?

Betrothal is a mutual and legitimate promise of future marriage between persons who may marry lawfully. As it is a contract in a serious matter, an engagement to marry gives a right in justice to have the contract executed. If the time for execution was fixed, the appointed time must be kept; otherwise the marriage must take place within a reasonable time.[1]

2. Are children bound to consult their parents with regard to marriage?

Yes, certainly. The marriage of a child is a very important family affair on which depends not only the happiness of the parties immediately concerned, but to some extent the happiness and welfare of the whole family. The parents have a right to be consulted about so important a family affair.[2]

3. Are children bound to obey their parents when they bid them break off an engagement?

Children are bound to break off an engagement at the bidding of their parents if the parents have good ground for their action. The parents will have good ground when the match is not desirable on account of the character of the other party, and even on account of inferiority in rank if this will be the cause of grave family dissensions and troubles. Otherwise children are not bound to obey their parents and break off an engagement to which there is no valid objection.[3]

[1] Manual of Moral Theology, vol. ii, 251 ff. [2] Ibid., 257. [3] Ibid., 257.

4. The case. If it would cost Caius a great deal, and seriously interfere with his happiness to give up his betrothed, he would not be bound to obey his parents. He might with a safe conscience elect to be faithful to his engagement, and abide by the consequences. However, the question in the case is rather whether he is bound to do this, or whether he may break off the engagement on account of the opposition of his parents and his employers. He may break it off with a safe conscience. The opposition of his parents to the match is not unreasonable, and he may be guided in the matter by their wishes if he likes. Caius, then, is at liberty to decide for himself whether he will keep to his engagement or break it off.

## 7

## BANNS

Post banna proclamata in quadam ecclesia Paulus medicus ad parochum adiit cui manifestabat se certo utpote medicum familiæ scire sponsum syphili ac morbo phthisiaco laborare nec proinde matrimonium inire debere. Parochus autem dubitabat utrum propterea matrimonium interdicere necne deberet Unde quæritur:

1. Qualem obligationem imponant banna iis qui obstaculum sciant matrimonii?

2. Quid sit secretum commissum et quandonam obligare desinat?

3. Quid sit Ecclesiæ vetitum?

4. Quid de medico et parocho in casu?

### Solution

1. What obligation do banns impose on those who know of an impediment to a proposed marriage?

Banns impose a grave precept to make known to the parish priest any secret impediment to a marriage that any one may know of. This precept binds not only in cases of a natural secret, but also in cases of a promised secret, but not of a professional secret except when this ceases to bind.[1]

[1] Manual of Moral Theology, vol. ii, 265.

2. What is a professional secret and when does it cease to bind?

Professional secrets are those which are communicated to another under an express or implied obligation of secrecy. Such secrets should be made known if this is necessary to avert a public calamity. They may also be made known to avert serious harm which would be done to an innocent party by him whose secret is in question unless the secret were made known.[1]

3. What is the prohibition of the Church?

The prohibition of the Church is one of the prohibitory impediments of marriage, which prevent a marriage being lawfully contracted but do not make it null and void if it is contracted in spite of the prohibition. It is particular if a particular marriage for just cause is forbidden by the parish priest, the bishop, or the Pope. It is general if it constitutes a law of the Church.[2]

4. What about the doctor and the parish priest in the case?

The doctor was under the obligation of professional secrecy with regard to the diseases of the bridegroom. It would have been better if in the first instance he had tried to induce the bridegroom to put off the marriage until the syphilis at least was cured. If the bridegroom refused to put off the marriage and refused to acquaint the bride or her father with his state of health, the doctor would be at liberty to tell the secret to any one who could apply a remedy. He would be justified in telling the parish priest if he thought that the parish priest could do this. The priest should try his best to induce the bridegroom

[1] Manual of Moral Theology, vol. i, 471 ff.

[2] Ibid., vol. ii, 288.

to put off the marriage, and if he does not succeed he will be at liberty to communicate what he knows to the bride's family. The priest can not refuse to assist at the marriage especially if the bride knows of the objection to it, and nevertheless consents to be married. But they should not use their marital rights till the syphilis at least is cured.[1]

[1] Antonelli, Medicina Pastoralis, vol. ii, 416 ff.

## 8

## AN UNHAPPY MARRIAGE

Anna Anglicana rogabat Titium sacerdotem ut ipsam in Ecclesiam admitteret. Quam dum instruebat Titius detexit eam esse valde infelicem ob frequentia adulteria et crudelitatem mariti qui sæpe aperte eam monet de divortio procurando si ipsi placeat, se enim fore contentum quippe qui matrimonium non iniisset nisi esset solubile quod etiam ante matrimonium eum dixisse Anna recordatur. Judicat Titius magis profuturum tum animæ tum corpori Annæ et duorum liberorum si divortium obtinere posset, imo dubitat utrum licite vitam maritalem Anna degat ob dubiam matrimonii validitatem. Unde quæritur:

1. Num petere divortium in curia civili liceat?
2. Num et quando matrimonium ob conditionem annexam invalidum reddi possit?
3. Quid ad casum?

### Solution

1. Is it allowed to petition in the civil court for divorce?

If the bishop judge that there is a good reason for asking for a judicial separation in the civil court this may be done in England and in the United States. If the ecclesiastical court has previously decided that a marriage was null and

void, the case may be taken into the civil court to obtain a declaration of nullity in that court also. If the marriage was and remains valid no one can ask for a divorce with the intention of marrying again during the lifetime of the first spouse. It is probable that in England and in the United States a Catholic may petition in the civil court for a divorce with the intention of obtaining the civil effects of divorce, not of marrying again.[1]

2. May a marriage be invalid on account of an annexed condition, and when?

If an express condition against the essence of marriage be added to the contract the marriage is null and void for want of consent. For the same reason if one of the parties only marries under a tacit condition which is against the essence of marriage, it will also be null and void.[2]

3. The case. Ann's Anglican husband said before and after marriage that he would not have married unless he knew that marriage could be dissolved. The marriage, as we must suppose, was contracted in the ordinary way, nothing being said in the act of marriage about these dispositions of the husband. In the external forum at least the marriage must be pronounced valid according to the rule laid down by Pius VI: "Si vero nulla fuit apposita expressa ejusmodi conditio repugnans substantiæ matrimonii, licet contrahentes generatim intendant contrahere juxta placita sectæ aut legis concedentis dissolutionem vinculi conjugalis, nihilominus matrimonium valide contractum censendum erit" (Litt. ad Archiep. Prag. 11 Jul. 1789).

[1] Manual of Moral Theology, vol. ii, 281 ff.
[2] Ibid., 271 f.

The same solution must be given even for the internal forum unless it is certain that at the time of contracting it the husband had no intention of contracting absolutely and for life.[1]

The only remedy therefore available for Ann would be to petition for judicial separation, or, if there is any special reason for it, for a divorce, with the intention only of benefiting by its civil effects; but such remedies as a rule are rather to be tolerated than suggested by a confessor or parish priest.

[1] Génicot, vol. ii, 459.

## 9

## A DRUNKEN HUSBAND

Titius et Titia, Catholici conjuges, per duos annos vitam sat prosperam degebant. Titius vero tunc socios pravos colere et ebrietati indulgere incepit. Pecuniam non tantum propriam sed uxori minis ac verberibus extortam ebrietate dissipabat. Patienter mala ad aliquot menses Titia tolerabat, postea vero ne miseriis obrueretur ipsa cum prole clam aufugit, et in alia regione victum sibi et proli labore manuum quærebat. Quam prædicta in sacro tribunali confitentem Caius sacerdos utrum absolvere posset dubitabat. Unde quæritur:

1. Quid sit divortium plenum et semiplenum?

2. Quas ob causas divortium semiplenum instituere liceat?

3. Num privata auctoritate fieri liceat divortium semiplenum?

4. Quid ad casum?

### Solution

1. What is *divortium plenum* and *semiplenum?*

Dissolution of the bond of marriage is called *divortium plenum;* separation *a toro et mensa,* or judicial separation, *divortium semiplenum.*

2. For what reasons may judicial separation be obtained?

By ecclesiastical law perpetual judicial separation may be obtained for adultery, heresy of the other party, and by mutual consent for a good purpose if there is no danger of incontinence. Temporary separation is allowed on account of serious danger to soul or body.[1]

3. Is this separation allowed by private authority?

When adultery is certain, complete, formal, and not condoned, the innocent party may separate on his private authority. This may be done in the other cases if there is danger in delay. Regularly, and especially if the sufficiency or reality of the cause is uncertain, the judgment of the bishop should be invoked.

4. The case. It would hardly be advisable or safe to tell people in the position of Titia that they are free to separate from a drunken and cruel husband. Such a doctrine would probably lead too many to exaggerate their own woes and to think that they were justified in leaving their husbands. Still in the circumstances mentioned in the case, Caius may absolve Titia without requiring her to go back to her husband, or to consult the bishop. Before the fact it might be difficult to countenance such a proceeding as that of Titia, but when she has done it in more or less good faith it may be tolerated by the confessor.[2]

[1] Manual of Moral Theology, vol. ii, 281.

[2] Génicot, vol. ii, n. 258.

## 10

## A LAWYER AND A DIVORCE CASE

Titius advocatus Catholicus rogabatur a Caio pariter Catholico ut divortium in curia civili ei peteret. Invenerat enim Caius, ut aiebat, certas probationes adulterii suæ conjugis, unde merito timebat ne prolem non suam alere teneretur. Titius indutias ad duos vel tres dies petebat ante responsum dandum, ac interim confessarium consulebat. Unde quæritur:

1. Ad quamnam jurisdictionem pertineant causæ de divortio ecclesiasticam an civilem?

2. Num judici Catholico in curia civili divortium pronunciare, advocato Catholico idem petere liceat?

3. Num omnia SS. Congregationum responsa de hac quæstione æqualiter omnibus regionibus applicari possint?

4. Quid Titio sit respondendum a confessario?

### Solution

1. Do divorce cases belong to the ecclesiastical or to the civil authority?

Divorce cases and all other matrimonial causes belong exclusively to the ecclesiastical courts, as Leo XIII taught in his letter *Arcanum* 10 Feb. 1880. However, in England and in the United States of America, with the leave of the bishop, a Catholic for just cause may petition for

judicial separation and probably even for divorce in the civil court.[1]

2. May a Catholic judge pass sentence of divorce in a civil court, and may a Catholic lawyer petition for it in the same court?

This is a disputed question, and something depends on the country and the law under which the trial takes place. Confining ourselves to England and to the United States, it is probable that for grave reason both may be allowed, though it is better to have nothing to do with such cases as far as possible.[2]

3. Can all the answers given by the Roman Congregations on this question be applied equally to all countries?

No, the circumstances of Catholic countries, of countries where the majority of the people are Catholics, but where sometimes the government is hostile to the Church, and of most English-speaking countries, are widely different, and much depends on circumstances. Thus the Holy Office, 27 May 1886, answered that in France a judge could not abstract from the objective validity of a marriage and give sentence of divorce as far as the civil effects were concerned. The nuncio in Belgium declared 14 Sep. 1886, that this answer did not refer to Belgium.[3]

4. What should the confessor say?

The confessor should tell Titius, who is obviously a conscientious Catholic, that he should write to the bishop and ask for his leave to undertake the case. This will give the bishop the opportunity of satisfying himself

[1] Manual of Moral Theology, vol. i, 587, 591; vol. ii, 281.

[2] Ibid., vol. i, 591; vol. ii, 283.

[3] Ballerini-Palmieri, Opus Morale, vol. vi, n. 825.

about the reality of the facts alleged in the case, and perhaps of suggesting some way of avoiding all the scandal and unpleasantness of a divorce case among Catholics. If Titius gets the bishop's leave he will be able to proceed without scruple.

## 11

### DISPENSATION FROM BANNS

Titius et Titia Catholici cognoscuntur implere præceptum Missæ audiendæ, nunquam tamen ut videtur sacramenta recipiunt. Quodam die Titius hujus rei causam Caio quasi-parocho declarat, et dicit quamquam in communi æstimatione ipse et Titia sint conjuges legitimo matrimonio juncti, hoc tamen non esse verum, quum illuc devenerint abhinc quatuordecim annis et dum Titiæ verus maritus adhuc inter vivos esset; postea quidem Titiæ maritum esse mortuum, nec ullum impedimentum inter se et Titiam amplius existere, et velle vitam reformare, dummodo sine scandalo at salva fama Titiæ fieri posset. Caius vero nescit quid in casu sit faciendum. Unde quæritur:

1. Qualis sit obligatio bannorum, et num aliquando cesset, vel dispensari possit?

2. Qualis sit obligatio matrimonium in facie Ecclesiæ celebrandi, et num aliquando cesset vel dispensari possit?

3. Quid ad casum?

#### Solution

1. What is the obligation of banns, and does it sometimes cease, or can a dispensation be had?

The obligation of publishing the banns before a marriage is celebrated is a grave one, but the bishop or his vicar-

general can dispense from them either wholly or in part for good reason. When there is no impediment and it is necessary to celebrate a marriage at once in order to avoid very serious harm, marriage may sometimes be contracted without banns.[1]

2. What obligation is there of celebrating marriage in the face of the Church, and does it cease sometimes?

From the earliest times there existed a grave obligation of celebrating marriage in face of the Church, or in other words before the parish priest or the bishop. Before the decree *Ne Temere* came into force, 19 April 1908, marriages of Catholics otherwise celebrated were only unlawful in England and in most parts of the United States; after that date they are also invalid, as a general rule. An exception to this rule is made by the decree *Ne Temere* (§ VIII): "Should it happen that in any district the parish priest or the Ordinary of the place or a priest delegated by either of them, before whom marriage can be celebrated, is not to be had, and that this condition of things has lasted for a month, marriage may be validly and licitly entered upon by the formal declaration of consent made by the spouses in the presence of two witnesses."

3. The case. We need not consider the difficulties in the way of marrying Titius and Titia which would arise from English civil law. There is good reason for granting a dispensation from banns and this should be obtained by Caius. He should also make sure that now at least there is no impediment to the marriage of Titius and Titia. The religious marriage may then be celebrated in the manner prescribed by ecclesiastical law.

[1] Manual of Moral Theology, vol. ii, 265 f.

## 12

### PREVIOUS MARRIAGE

Bertha viginti annos nata Caio nupserat quocum plus minus pacifice vixit per duos annos. Tunc unde se uxoremque sustentaret quum in Anglia amplius lucrari non posset, Caius in Americam tetendit, et fideliter per aliquot menses litteras pecuniamque uxori misit, quando subito cessarunt litteræ nec quidquam postea de marito audivit Bertha. Post aliquot annos in aliam civitatem quum Bertha migrasset Titius acatholicus qui cubiculum in ejus domo conduxerat eam in uxorem postulabat. Quum Bertha consensisset, impossibilitatem dispensationem obtinendi ab episcopo, in Ecclesia Anglicana nuptiæ celebrabantur. Quæ omnia ante diem 19 Aprilis 1908 evenerunt, post illum autem diem ad confessarium accessit Bertha qui factis auditis affirmabat invalidum esse matrimonium et a Titio eam separare oportere. Unde quæritur:

1. Quid faciendum quando dubitetur de statu libero sponsi qui velit inire matrimonium?

2. Quid post matrimonium contractum ab aliquo incerto de morte prioris conjugis?

3. Quid ad casum?

SOLUTION

1. What is to be done when it is doubtful whether one is free to marry who wishes to do so?

Inquiry must be made and if the death of the previous spouse is proved by a certificate of death or other authentic document, or by two witnesses who are above suspicion, or by other lawful means, the person may be allowed to marry again. If any reasonable doubt remains the case should be referred to the bishop, who without the leave of the Holy See will not allow a second marriage unless the freedom to marry is proved.[1]

2. What should be done when a second marriage has been contracted by one who was not certain that a former spouse was dead?

"If a person has unlawfully contracted a second marriage without the necessary certainty concerning the death of a former spouse, it does not follow that the second marriage is invalid, and that the parties must separate. If there is only slight doubt about the death of the former spouse, after making fruitless inquiries, the parties may live together as man and wife. If only one of the parties is in bad faith and is not certain of the death of a former spouse, while the other knows nothing of the difficulty, he should render the marriage debt, but he has no right to ask it as long as he remains in bad faith. If both parties are in bad faith, they can not lawfully use marriage as long as they are in that state. Inquiries should be made, and if probable reasons can be discovered for thinking that the former partner is dead, thay may use marriage, according to a probable opinion. For even in this case the

[1] Manual of Moral Theology, vol. ii, 296.

marriage has been contracted, it is probably valid, and it is not certain that any one else has a prior right, so the parties should be allowed to use it. If the second marriage was contracted in good faith, and a doubt about the death of a former spouse arises subsequently, inquiries should be made, and if they are fruitless the parties may live as man and wife. Of course in all cases when it is found out for certain that a former spouse is alive, the second marriage is invalid, and the parties must separate, or at any rate must not live as man and wife together."[1]

3. The case. The confessor was wrong in deciding at once that Bertha must separate from Titius. The marriage with Titius was contracted in England where clandestinity was not a diriment impediment till 19 April, 1908. If when the marriage was celebrated Caius was dead, and if consent was given absolutely by both parties, and there were no other diriment impediment between Bertha and Titius, the marriage was valid though illicit. The confessor should therefore have made inquiries from Bertha as to whether Titius was baptized or not, whether there was any diriment impediment between them, whether Titius knew anything about her former marriage or not, whether there was any possibility of learning what had become of Caius. If Titius was a baptized Anglican and knew nothing about Bertha's former marriage, and especially if there was no hope of learning anything about Caius, he could not be deprived of his marital rights without injustice. Under these same suppositions the confessor should tell Bertha how wrongly she acted in marrying Titius at all and especially in a Protestant Church,

[1] Manual of Moral Theology, vol. ii, 297; Ballerini, Opus Morale, vol. vi, 677.

but that since in all probability her former husband is dead, she may live with Titius as his wife and frequent the sacraments. She should be told to pray for Titius' conversion to the Faith, and if there are any children of the marriage to bring them up as Catholics. She should also be absolved from the excommunication which is incurred by marrying in a Protestant Church, if she was aware of the penalty.

## 13

## A TOO ACCOMMODATING PRIEST

Bernardus vehementibus Claræ uxoris suæ quærimoniis fractus ab ea discedit, et in Americam pergit. Elapsis circiter octo annis, Clara credens maritum mortuum esse se confert in aliam civitatem, ubi pravum consortium sub spe matrimonii cum Roberto acatholico habet, atque ex illo gravida evadit. In quibus angustiis properat ad Franciscum, sacerdotem amicum suum, cui omnia pandit, postulatque quid sibi sit agendum. Omni diligenti inquisitione facta Franciscus judicans probabilitatem de morte Bernardi longe majorem esse quam de vita rem totam defert ad Ordinarium, qui tamen negat se posse mulieri facultatem tribuere ut ad novas nuptias transeat. In his circumstantiis Clara approbante Francisco ad evitandum infamiæ periculum matrimonium coram officiali civili contrahit cum Roberto inscio prioris conjugii, et ante decretum *Ne Temere* promulgatum. Postea autem stimulis conscientiæ impulsa ad confessariun accedit qui omnibus patefactis secum quærit:

1. Qualis probatio requiratur ad contestandam mortem prioris conjugis?

2. An moralis certitudo de morte ejus necessario requiratur pro foro interno æque ac pro externo ut novum matrimonium licite contrahi possit?

3. Quid judicandum de sententia cl. Ballerini, nempe: "Quando certitudo moralis habetur de morte conjugis

potest parochus nulla petita Ordinarii licentia et absque ejus scientia novo matrimonio assistere." [1]

4. Quid de consilio Francisci et quid de usu matrimonii secundi?

SOLUTION

1. What sort of evidence is required to prove the death of a former spouse?

That evidence is required which is sufficient to generate moral certainty of the fact. A burial certificate, or the certificate of the doctor who attended him, two reliable and sworn witnesses, one witness when his evidence is backed by other indications of the fact, will be sufficient. (Instructio S. O., *Concilia Westmonast.*, p. 410).

2. Is moral certainty of death required in the internal forum as well as in the external?

Yes, because otherwise there will be a doubt as to whether the second marriage is valid or not.

3. What is to be thought about the opinion of Ballerini?

According to the common law the freedom of parties who wish to be married must be proved in legal form to the satisfaction of the Ordinary. In many places this is not done, but the death of a former spouse should be morally certain from public arguments; the mere subjective certainty of the parish priest is not sufficient. In this sense Ballerini's opinion may be accepted.

4. What about the advice of Francis, and the use of the second marriage?

Francis did wrong to approve of Clare's conduct. She was in a difficult position, it is true, but she should not have put herself in it. At any rate it does not justify

[1] Opus Morale, tract. x, c. 2, n. 676.

her in marrying before the registrar a second husband while she is not certain that her former husband is dead. However, as the second marriage took place in England before clandestinity became a diriment impediment of marriage, and Clare thought that her former husband was dead, and acted on the advice of a priest, and Robert knew nothing about the former husband, Clare may live with him as his wife, but she will have to separate from him if her former husband proves to be alive. She should be told of her obligation to bring up all her children as Catholics, and to pray for the conversion of Robert.

## 14

## DOUBTFUL BAPTISM AND MARRIAGE

Titius et Titia conjuges et religione sectæ Anglicanæ rogaverunt Caium sacerdotem ut ipsos in Ecclesiam Catholicam reciperet. De eorum baptismate inquirens Caius invenit Titiam probabiliter fuisse, Titium vero certo nunquam baptisatum; insuper eos esse in tertio gradu consanguinitatis conjunctos. Quum vero juxta recentem quemdam theologum probabiliter baptisati certo Ecclesiæ legibus sint subjecti, judicabat Caius primum dispensationem esse petendam ut saltem nunc Titius et Titia validum matrimonium inirent. Alius vero sacerdos matrimonium ab initio fuisse validum putabat. Unde quæritur:

1. Quid censendum de sententia recentis illius theologi?
2. Quinam sint legibus Ecclesiæ matrimonialibus subjecti?
3. In dubio de baptismo quid pronunciandum de validitate matrimonii?
4. Quid ad casum?

### Solution

1. What is to be thought of the opinion referred to? The opinion is that of Lehmkuhl: "Dubie baptisati jure divino jurisdictioni Ecclesiæ subsint."[1] Of this

[1] Theol. Moral., vol. ii, 426 nota.

opinion Fr. Wernz writes: "At hujusmodi principium huc usque passim a doctoribus non videtur esse admissum, nec rationes allatæ omnibus esse efficaces. Difficulter quoque intelligitur quomodo quis vere et objective ligetur legibus irritantibus Ecclesiæ licet dubia tantum subjectiva existant de ejus baptismo, atque ipse forte objective careat charactere baptismali, qui ex jure divino est unicum fundamentum dependentiæ alicujus hominis ut subditi a legibus ecclesiasticis." [1] Génicot says: "Verius ibi meram præsumptionem reperiri putamus quam Ecclesia sequatur in dijudicandis causis matrimonialibus." [2]

2. Who are subject to the matrimonial laws of the Church?

All those who are baptized, even schismatics and heretics, unless the Church has made an exception, as she has done with regard to the law of clandestinity.

3. In a case of doubtful baptism what is to be said about the validity of marriage?

The general rule is: "Baptismus dubius sive dubio juris sive facti in ordine ad validitatem matrimonii contracti vel contrahendi habendus est ut validus." [3] The rule, which has frequently been formulated and acted on by the Roman Congregations, more probably lays down a presumption which is followed as long as the doubt remains, but which must yield to the truth if it becomes manifest.

4. The case. Titia probably had been baptized; Titius certainly had not been baptized, and this fact we presume to have been publicly known at the time of their marriage,

[1] Jus Decretalium, iv, 508 nota (33).

[2] Theol. Moral., vol. ii, 488 nota.

[3] Wernz, Jus Decret., lib. iv, n. 507.

not to have been detected now for the first time. The marriage was invalid. "Qui valide aut dubie baptisati fuerint, ii subsunt impedimentis etiam jure ecclesiastico dirimentibus. . . . At fieri potest ut una pars valide aut dubie, altera vero invalide baptista fuerit. Hoc in casu eorum matrimonium nullum erit ob cultus disparitatem" (S. O. 4 Feb. 1891. A. S. S. XXVI, 62). Titia was also subject to the impediment of consanguinity, and so the marriage was also invalid on this head. Caius should leave them in good aith about the validity of their marriage, apply for a dispensation from consanguinity in the third degree in the case of converts already married, and after he has received them into the Church and obtained the dispensation, get them to renew their consent before the parish priest and two witnesses.

## 15

### AFFINITY

Titius missionarius post plures annos in vinea Domini in Africa meridionali fructuose transactos in patriam redit ad vires corporales spiritualesque reficiendas. In missione plures casus morales solutu haud faciles sese offerebant, inter quos etiam sequens. Vir quidam primarius inter paganos ad fidem convertebatur, at quum quatuor uxores haberet tres remittere debuit. Attamen primam nullatenus retinere voluit, sed potius ejus sororem inter omnes juniorem et ultimam multis bobus emptam. Titius vero perplexus dubitabat utrum hoc permitti posset, etiamsi uteretur suis sat amplis missionariis facultatibus ad dispensationes necessarias concedendas. Quæritur:

1 Num impedimentum affinitatis sit juris naturalis vel ecclesiastici tantum?

2. Quasnam facultates habeant missionarii in partibus infidelium quæ usui essent Titio in casu?

3. Quid ad casum?

#### Solution

1. Is the impediment of affinity derived from natural or ecclesiastical law?

Affinity in the collateral line is certainly derived from ecclesiastical law, and more probably also in the direct line. As a diriment impediment, therefore, it does not

affect those who are not baptized. However, even in the non-baptized, carnal intercourse creates a certain natural bond; the parties become one flesh, and this natural bond becomes affinity and a diriment impediment of marriage after Baptism.[1]

2. What faculties have missioners among infidels which might perhaps be of use in this case?

Bishops and even priests in missionary countries frequently have the following faculties:

"Dispensandi in 3 et 4 consanguinitatis et affinitatis gradu simplici et mixto tantum, et in 2, 3, et 4 mixtis, non tamen in 2 solo quoad futura matrimonia; quo vero ad præterita etiam in 2 solo, dummodo nullo modo attingat primum gradum, cum his qui ab hæresi vel infidelitate convertuntur ad fidem catholicam et in præfatis casibus prolem susceptam declarandi legitimam."

"Dispensandi cum gentilibus et infidelibus plures uxores habentibus ut post conversionem et baptismum, quam ex illis maluerint, si etiam ipsa fidelis fiat, retinere possint, nisi prima voluerit converti."

"Dispensandi in utroque foro cum Catholicis ejus jurisdictioni subjectis, in matrimoniis sive contractis sive contrahendis, super impedimento primi gradus affinitatis in linea collaterali ex copula licita provenientis (pro decem casibus)."

3. The case. The first wife is presumed to be the only lawful one, and if she is willing to be converted, her husband should adhere to her. If she is not willing to be converted, but is ready to live peaceably with her husband, in this case also he should remain with her, unless he obtains a dispensation which may be given in virtue of

[1] Manual of Moral Theology, vol. ii, 302.

the second of the above faculties. In case the first will neither be converted nor live peaceably with her husband, the Pauline privilege may be invoked, and the husband will be free to marry any Christian wife. Sometimes among infidel savages there may be serious doubt as to whether the marriage with a first wife was valid on account of the man's intention not to limit himself to one, and for other reasons. In such a case the man would not be married at all. In the case proposed, the woman that the man wishes to retain as his wife is related to him in the first degree of affinity in the collateral line, but sometimes power to dispense in this impediment is granted as by the third of the above faculties, or a dispensation for a particular case may be asked for from the Holy See. From what has been said Titius will see how his case and similar ones must be treated.

## 16

## CONSANGUINITY

Caius juvenis adulterium commisit cum Bertha et cum Julia maritis absentibus. Postea emendatis moribus Caius honestissimam mulierem duxit, paterno tamen cum affectu semper secreto prosequebatur Mariam e Bertha natam et Titium quem Julia sibi peperit. Post aliquot annos mirabundus advertebat Titium et Mariam jam adultos maxima familiaritate inter se esse conjunctos, et tandem obstupefactus audiebat eorum banna in ecclesia proclamata, inire enim matrimonium intendebant. Post aliquot dies secretum quod nemo alius sciebat Caius confessario manifestabat, et de suis obligationibus rogabat. Unde:

1. Quid sint banna, et quam obligationem matrimonii impedimenta manifestandi inducant?

2. Quo jure inductum sit impedimentum consanguinitatis, et quomodo computentur gradus consanguinitatis eorum qui ex eodem patre diversa tamen matre originem ducant?

3. Quid ad casum?

### Solution

The first question was answered above, p. 259.

2. To what law is the impediment of consanguinity due, and how are the degrees of consanguinity reckoned of those who have the same father but different mothers?

Consanguinity in the first degree of the direct line annuls marriage by natural law; in the other degrees of the direct line it annuls marriage, but more probably only by ecclesiastical law. It is disputed whether consanguinity in the first degree of the collateral line annuls marriage by natural or by ecclesiastical law; in more remote degrees of the collateral line up to the fourth inclusive it annuls marriage by ecclesiastical law.[1] It is immaterial whether both parents of the common stock are the same or only one.

3. The case. The banns of Titius and Mary were proclaimed, they being the illegitimate children of Caius by different mothers, and so they were half-brother and half-sister. They were related therefore in the first degree of the collateral line of consanguinity, but Caius, their father, was the only person who knew of the relationship. He asked his confessor whether he was bound to do anything to stop the marriage. No, he is not bound to stop the marriage. The impediment is probably only of positive not natural law, the parties are in good faith and know nothing about it, he could not effectually intervene without betraying himself and the two women with whom he had sinned, to say nothing of the danger of spoiling the lives of the young couple.

[1] Manual of Moral Theology, vol. ii, 299.

## 17

## SACRED ORDERS

Caius missionarius sacerdos quum advertisset Julium patremfamilias cum uxore sua Ecclesiam quidem frequentare nunquam tamen ad sacramenta accedere, causam caute inquisivit. Tandem aliquando Julius agnovit se esse sacerdotem in Australia ordinatum in ipsa tamen ordinatione intra se explicite votum castitatis exclusisse, ita ut matrimonium quod post aliquot annos sacerdotii iniisset pro valido indubitanter habeat. Caius vero rogat utrum aliquod sit Julii opinioni fundamentum, et utrum eum ad Ecclesiæ sacramenta fortasse admittere possit. Unde quæritur:

1. Quid sit impedimentum ordinis sacri et quo jure constituatur?

2. Num sit idem impedimentum dispensabile?

3. Num vis impedimenti sit in ipso ordine suscepto an in voto annexo?

4. Quid ad casum?

### Solution

1. What is the impediment of sacred Orders, and by what law is it established?

The solemn vow of chastity taken implicitly when sacred Orders are received is a diriment impediment of marriage by ecclesiastical law.[1]

[1] Manual of Moral Theology, vol. ii, 307.

2. May a dispensation be had from this impediment? Inasmuch as the impediment has been established by the authority of the Church, it may be dispensed by the same authority, but the Church rarely dispenses deacons and still more rarely priests from this impediment.

3. Is the impediment in the sacred Orders, or in the vow of chastity annexed to sacred Orders.

It is in both, in this sense, that in the Western Church a solemn vow of chastity which annuls subsequent marriage is implicitly taken by all who receive sacred Orders, but apart from this vow and independently of it, sacred Orders are a diriment impediment of marriage by ecclesiastical law.[1]

4. The case. Julius acknowledges that he was ordained a priest in Australia, but he also asserts that when he was ordained he mentally but expressly excluded the vow of chastity, so that he holds for certain that the marriage which he subsequently contracted is valid. Julius' opinion can not be maintained. He can not prove his mental withholding of his consent in the matter of the vow, and he would not be listened to in an ecclesiastical court. Besides, sacred Orders in themselves, apart from the vow, are a direment impediment of marriage, so that the marriage is null and void whether he took the vow of chastity or not. Julius is therefore living in concubinage, and may not be admitted to the sacraments while living in that state.[2]

[1] Manual of Moral Theology, vol. ii, 308.

[2] Wernz, Jus Decretalium, lib. iv, n. 393.

## 18

### FEAR

Anna ab aliquot annis conversa ad fidem Catholicam venit ad Caium missionarium et dicit se Protestanticam in Hibernia septentrionali Titio protestantico nupsisse, ad id adactam continuis precibus imo et minis expulsionis e domo paterna, postea ei genuisse duos filios, sed denique ob ejus crudelitatem et quia nunquam eum amasset, maritum in Hibernia dereliquisse, et in Angliam venisse. Nunc maritaliter cohabitat cum Titio Catholico et uterque vellet matrimonium inire ut sacramenta recipere posset. Caius vero nescit utrum eos ad matrimonium admittere liceat, et quærit quid a se sit faciendum. Unde quæritur:

1. Quid sit impedimentum metus et quo jure statuatur?
2. Num et quomodo matrimonium ob metum irritum convalidari valeat?
3. Ad quem pertineat tractare causas tales matrimoniales?
4. Quid ad casum?

#### Solution

1. What is the impediment of fear, and by what law is it established?

Fear is a perturbation of mind arising from present or future danger. When marriage is contracted through grave fear caused unjustly by a free agent with a view to

extorting marriage, ecclesiastical law makes the marriage null and void. Whether it is also void by natural law is a disputed point among divines.[1]

2. Can marriage, void through fear, be revalidated, and how?

Yes, such marriage may be revalidated when the fear ceases by expressing free matrimonial consent.[2]

3. To whom does it belong to treat of such matrimonial causes?

To the bishop as judge of first instance in the external forum. "Quæstiones de validitate matrimoniorum causæ nuncupantur; quæ ad forum externum unice pertinent, ab ordinario juridice determinandæ. Ad ordinarium igitur recurrendum est quando agitur de novo matrimonio contrahendo ubi adsit dubium de validitate matrimonii jam contracti. . . . Ad matrimonia autem jam contracta quod attinet, sacerdotes omnes qui curam animarum gerunt, gravissime monemus ac in Domino jubemus ut quamquam illis certissime constet matrimonium aliquod invalidum fuisse, omnibus quorum interest aperte declarent se nullam auctoritatem habere judicium in hujusmodi re ferendi: sed antequam ad novum matrimonium procedere præsumant ad ordinarium recurrant ejusque juridicam sententiam expectent" (IV Conc. West., d. 15).

4. The case. Caius may not admit Ann to a fresh marriage until it has been proved that the former marriage was invalid. It is possible that it was invalid to begin with; whether it afterwards became revalidated by the expression of free marital consent on the part of the woman or not, does not appear from the case as stated. Caius

[1] Manual of Moral Theology, vol. ii, 320.

[2] Ibid., 321.

should therefore question Ann with a view to finding this out, and so discovering whether there is a prima facie case for invalidity or not. If he finds that there is solid ground for thinking that the former marriage was and remained null and void, Caius should send all the particulars of the case to the bishop, who after examining the evidence will pass sentence in accordance with it. The case will then be sent to the higher ecclesiastical court if the bishop's sentence was in favor of invalidity. The woman will be free to marry again after two concordant sentences have been given in favor of the nullity of the marriage.

## 19

### CRIME

Titius anglicanus obtinuit divortium a Titia pariter anglicana uxore propter hujus adulterium et duxit Bertham e qua filios habet. Recenter mortua Titia ad fidem convertebantur Titius et Bertha, ac petebant a Julio sacerdote Catholico ut in Ecclesiam reciperentur, sed probe scientes Ecclesiam Catholicam divortium non admittere, rogabant ut simul nuptias benediceret. Julius vero rogat quid a se sit faciendum. Unde quæritur:

1 Num hæretici subdantur impedimentis dirimentibus matrimonii?

2. Quomodo sint hæretici cum Ecclesia reconciliandi?

3. Quid ad casum?

### Solution

1. Are heretics subject to the diriment impediments of marriage?

Yes, unless they have been specially excepted by competent authority as is the case with the impediment of clandestinity.[1]

2. This question was answered above, p. 287.

3. The case. Titius, an Anglican, divorced his wife Titia, who was also an Anglican, and married Bertha. We must presume that Titius and Titia were baptized,

[1] Manual of Moral Theology, vol. ii, 286.

and so subject to the diriment impediments of the Church. The divorce was null and void, and so in attempting to marry Bertha during the lifetime of Titia and consummating the attempted marriage, he contracted with her the impediment of crime. Most probably they are in ignorance of this; however *in foro externo* it is not safe to follow the opinion that ignorance excuses from this impediment. Julius should leave them in good faith, at any rate till he has obtained the requisite dispensation, if Titius and Bertha think that they are married; otherwise they should not use marriage rights. After obtaining the dispensation from the impediment of crime and from banns, they should be married privately before the parish priest and two witnesses.[1]

[1] Gasparri, De Matrim., vol. i, 649.

## 20

## WAS SHE FREE TO MARRY?

A Titio viro Catholico in matrimonio petitur Caia recenter ad fidem conversa antea Anglicana. Caia quidem erat matrimonio juncta cum Lucio consobrino pariter Anglicano, at propter ejus crudelitatem ac adulterium post primam prolem petierat adhuc Anglicana divortium in curia civ li quod gaudens obtinuit. Nunc vero Caia vellet nubere Titio si legibus Dei et Ecclesiæ ei permittatur, unde rogat confessarium si quid matrimonio optato obstet. Unde quæritur:

1. Quosnam obligent impedimenta dirimentia matrimonii?

2. Quo jure statuatur impedimentum consanguinitatis?

3. Num liceat matrimonium contrahere cum dubio impedimento?

4. Quid ad casum?

### Solution

The first question was answered above, p. 292 and the second, p. 286.

3. Is it allowed to contract marriage with a doubtful impediment?

It is not allowed to contract marriage when there is a doubt whether it is not forbidden by the natural or divine law. When the doubt is whether it is not forbidden by

positive ecclesiastical law, the marriage may take place When the doubt is of fact, as, for example, whether the parties are not related within he prohibited degrees, a dispensation should be asked for from the bishop, who can grant it *ad cautelam*.[1]

4. The case. As Caia and Lucius were cousins, and we must presume that they were baptized, their marriage was null and void by ecclesiastical aw. A divorce has been granted in the civil court, and so, if our suppositions are correct, Caia is free to marry. However, the confessor or the parish priest should make inquiries and satisfy himself about the facts of the case. When he has done this, he should submit the evidence to the bishop and await his decision, according to the rule laid down above, p. 283.

[1] Manual of Moral Theology, vol. ii, 336.

## 21

## MULTIPLE IMPEDIMENTS

Caius, vivente adhuc uxore sua Caia, in ecclesia Protestantica cum Titia Caiæ consanguinea in tertio gradu collaterali, et ipsa quidem conjugata, matrimonium attentavit. Paucis post annis, tum Caia tum Titiæ marito defunctis, ad Thomam confessarium accedit Titia ut omnia componat. Inter confitendum narrat se integrum per annum concubinarie vixisse cum Sempronio, consanguineo Caii in secundo gradu collaterali eique filium peperisse. Thomas igitur quærit:

1. Quotuplex sit impedimentum criminis; quænam sint conditiones ad illud incurrendum requisitæ; et quandonam fiat duplex?

2. Si impedimentum per se publicum, sed per accidens secretum, in tribunali detegatur, debeatne ejus relaxatio sequi regulas fori interni an externi?

3. Quænam dispensationes in casu requirantur; et quonam in foro res tractari debeat?

4. Quænam absolutiones a censuris in casu dari debeant? [Ex casibus solvendis in diœcesi Liverpolitana, 1899–1900.

### Solution

1. What is the impediment of crime; what conditions are required for incurring it; and when is it double?

Generally the impediment of crime is said to be three-

fold; adultery, homicide, and both together. With adultery there must be a promise of marriage or attempted marriage with the adulterer; with homicide when committed by one party there must be physical or moral co-operation of the other party; when there is both adultery and homicide, the other conditions are not necessary that the impediment may exist between the parties. If both parties are married in the first case; if the spouses of both are killed in the second; and if in the third there is adultery with the promise of, or attempt at, marriage, and the machination of the other party in the homicide, there will be two impediments.[1]

2. If an impediment is *per se* public, but secret *per accidens*, ought its dispensation to follow the rules of the internal or external forum?

It should follow the rules of the external forum: "Communi jurisprudentia receptum est publicum omnino haberi impedimentum quod licet actu occultum sit quandocumque vulgari et probari potest." [2]

3. What dispensations are required in the case and in what forum should the case be treated?

Titia is the *affinis* of Caius in the third degree; we presume that the attempted marriage was consummated and so there is a double impediment of crime between them (*adulterium cum attentato matrimonio*); Titia is the *affinis* of Caius in the second degree on account of her illicit intercourse with Sempronius. All these facts are publicly known, so that the whole case must be treated in the external forum, and dispensations be obtained from the above impediments.

[1] Manual of Moral Theology, vol. ii, 313.

[2] Gasparri, De Matrim., vol. i, n. 251.

4. What absolutions from censures should be given in the case?

Caius and Titia incurred the censure of excommunication inflicted on heretics and their abettors on account of their attempting marriage in the Protestant Church, for to receive a sacrament in a non-Catholic place of worship is presumed to be an act of heresy. They will, then, need absolution from this censure.

## 22

## A TREACHEROUS FRIEND

Titius cœlebs maxima familiaritate cum Caio ejusque uxore Caia erat conjunctus, et leges divinas humanasque spernens sæpius cum Caia adulterium commiserat. Caius gravi morbo correptus ante mortem de uxore indigna sollicitus Titio ad se advocato dixit sibi fore gratissimum si uxorem relictam matrimonio duceret. Quod Titius se facturum promisit, ac postea ut Caius tranquillus moreretur Titius et Caia ei se post ejus mortem in matrimonium inituros simul adstantes lectulo promiserunt. Quam promisionem morte Caii secuta redintegrarunt ac Paulum parochum ut banna proclamaret rogarunt. Paulus vero in examine sponsorum prædicta quum detexisset, incertus erat utrum ad matrimonium essent habiles necne. Unde quæritur:

1. Quodnam sit impedimentum criminis et qua lege statuatur?

2. Num ignorantia excuset ab impedimento incurrendo?

3. Quænam conditiones requirantur ut adsit impedimentum ex adulterio et promissione matrimonii?

4. Quid ad casum?

### Solution

1. What is the impediment of crime, and by what law is it established?

Crime is a diriment impediment of marriage established

by ecclesiastical law by which those who are already married and commit adultery, homicide of spouse, or both together, with a third person, are made incapable of marrying that person even after the death of the spouse.[1]

2. Does ignorance excuse from incurring this impediment?

It probably excuses in the forum of conscience those who marry in ignorance of the impediment; ignorance can not be effectively pleaded in the external forum in favor of the validity of a marriage vitiated by this impediment.[2]

3. What conditions are necessary for the impediment from adultery and promise of marriage?

The adultery must be real, formal, and complete. The promise must be real, accepted by the promisee, absolute, made with knowledge of the present marriage, and undertaking to contract marriage after the death of the other spouse. Both the adultery and the promise must have place during the continuance of the same marriage.[3]

4. The case. There was no impediment of crime between the parties, so that Paul might marry them if there were no other obstacle. The promise of marriage had not the requisite conditions for producing the impediment. Titius promised Caius on his death-bed that he would marry Caia, and then both Titius and Caia promised him that they would marry each other after his death. When Caius was dead, Titius and Caia promised marriage to each other, but it could not then produce the impediment of crime.

[1] Manual of Moral Theology, vol. ii, 313.
[2] Ibid., 317.
[3] Ibid., 314.

## 23

## A GOVERNESS'S MARRIAGE

Titius Catholicus apud Liverpool degebat, sed sæpe negotiationis causa Dublinum petebat ubi familiaritatem contraxit cum Caia Catholica magistra in familia privata (vulgo *governess*). Interdiu muneri incumbebat Caia in parochia Sancti Andreæ, ubi familia cui inserviebat residebat, vespere vero ad domum paternam in parochia Sanctæ Agathæ redibat. Sponsalibus inter eos initis, matrimonium fuit in Ecclesia S. Andreæ celebratum, ac postea cum uxore Titius domum Anglicam est reversus. Quibus auditis missionarius quidam sacerdos in Anglia dubitabat utrum Titius valido matrimonio esset conjunctus. Unde quæritur:

1. Num decretum *Tametsi* in Hibernia sit promulgatum, et quosnam ibi obliget?

2. Quid decreto *Tametsi* statuatur?

3. Quid sanxerit decretum S. C. C. *Ne temere*, 2 Aug. 1907?

4. Quid ad casum?

### Solution

1. Was the Tridentine decree *Tametsi* published in Ireland, and whom did it bind?

The decree *Tametsi* was extended to the whole of Ireland 2 Dec., 1827, and bound all Catholics. Mixed marriages and marriages between Protestants did not come under it.

2. What is laid down by the decree *Tametsi?*

In order to prevent clandestine marriages the decree *Tametsi* prescribed the publication of banns, and the celebration of marriage in presence of the proper parish priest of one of the parties or his delegate and two witnesses. Marriages not contracted before the parish priest and two witnesses were declared null and void. This decree did not bind in parishes where it had never been published.

3. What did the decree *Ne temere* prescribe?

By this decree clandestine marriages, or marriages not contracted in presence of the parish priest or the ordinary of the place or a priest delegated by either of these and two witnesses, were made null and void. This decree came into force 19th April, 1908, and binds all Catholics throughout the Western Church. In the German Empire mixed marriages are exempt from this decree if the parties were born and marry therein.[1]

4. The case. Both Titius and Caia were Catholics and so in Dublin their marriage was subject to the decree *Tametsi* if it was contracted before 19th April, 1908. Caia had neither domicile nor quasi-domicile in the parish of St. Andrew, where the marriage took place. She merely was occupied there during the day. The parish priest of St. Andrew's was not the proper parish priest of either of the parties and the marriage was null and void.

If the marriage was contracted after 19th April, 1908, it would be valid, as it was contracted before the parish priest of the place, but it was unlawful, because he was not the parish priest of the bride, nor had he his leave. He has therefore no right to the marriage fees, and he must remit them to the parish priest of the bride according to the decree *Ne temere*.

[1] Manual of Moral Theology, vol. ii, 332.

## 24

## MARRIAGE BEFORE THE REGISTRAR

Patricius Dublini incola sponsalibus cum Birgitta acatholica initis, petiit a parocho ut dispensatione obtenta matrimonium celebraret. Qui tamen negavit se quidquam in casu facturum. Quum Patricius audiret sacerdotes in Anglia mitiores se gerere quoad matrimonia mixta, ipse cum sponsa ad locum peregrinationis in Anglia celebrem pergit, et missionarium ibidem curam animarum exercentem rogat ut matrimonium celebret. Missionarius vero dubitat utrum quidquam pro Patricio facere valeat et dum tempus terit Patricius matrimonium coram officiali civili contrahit. Unde quæritur:

1. Quid sit matrimonium contrahere " in fraudem legis"?
2. Quid sit impedimentum clandestinitatis et num obliget in Anglia, Hibernia, Belgio, Gallia?
3. Quid faciendum esset a missionario in casu si judicaret matrimonium esse celebrandum?
4. Quid de validitate matrimonii in casu?

### Solution

1. What is the meaning of contracting marriage " in fraud of the law?"

Theologians are not agreed on the precise meaning of the phrase which occurs in the celebrated decree of Urban

VIII issued Aug. 14, 1627. Some hold that only those who depart from their parish with the principal intention of contracting marriage otherwise than before their parish priest, act in fraud of the law. Others maintain that the mere fact of contracting marriage otherwise than before the parish priest defrauds him of his rights, and so is in fraud of the law which wishes to safeguard them.[1]

2. What is the impediment of clandestinity, and does it bind in England, Ireland, Belgium, and France?

Clandestinity is the celebration of marriage otherwise than in the form prescribed by the Church. Clandestine marriages were always held to be unlawful by the Church. The Council of Trent made marriage contracted otherwise than before the proper parish priest of one of the parties or his delegate, invalid in places where the decree was published. It was published for all baptized persons in Belgium and France, for Catholics in Ireland, but it was never published in England. The decree *Ne temere,* Aug. 2, 1907, binds Catholics throughout the Western Church, and annuls marriage contracted otherwise than before the parish priest of the place.

3. What should the missioner in the case have done if he judged that the parties were to be married?

He could validly and lawfully have assisted at the marriage if he had procured delegation for himself from the ordinary or parish priest of one of the parties. Otherwise one of them would have had to make himself his subject by acquiring a domicile or at least a quasi-domicile in his parish.

4. What about the validity of the marriage in the case?

[1] Gasparri, De Matrim., vol. ii, 985.

If the marriage was celebrated before April 19, 1908, it was unlawful but valid if we presume that Bridget was baptized. For Bridget was not subject to the decree *Tametsi* in Ireland, and might have contracted a valid though clandestine marriage with Patrick there. She kept her freedom when she came to England where the decree was never published.

If the marriage was celebrated after April 19, 1908, it was invalid by the terms of the decree *Ne temere*.

## 25

## A NOTABLE CASE

Henrietta filia Caiæ natione Gallæ quæ domicilium Londini pro toto tempore ad quod casus se extendit retinuit, educationis causa degebat in conventu quodam monialium Parisiis. Quam ibi peregrinus Germanicus adamans petiit in matrimonium. Cui Henrietta matrimonium promisit, et statim post educationem finitam reliquit conventum et donec matrimonium post aliquot hebdomadas celebrari potuit cubicula in quodam diversorio cum matre quæ propterea ex Londino venerat habitabat, et tandem coram parocho ejusdem loci matrimonium fuit celebratum. Infelix tamen fuit eventus, nam propter adulteria et crudelitatem viri divortium a vinculo in curia civili petiit et obtinuit. Nunc vero Henrietta vellet Julio nubere si per leges ecclesiasticas id ei permittatur. Unde quæritur:

1. Quid sit impedimentum clandestinitatis et quosnam obliget in Anglia et in Gallia?

2. Quinam sit parochus proprius?

3. Quid requiratur ad domicilium et quasi-domicilium, et ubinam habeant domicilium vel quasi-domicilium filiæfamilias?

4. Quid ad casum?

## Solution

The first question is answered above, p. 304.

2. Who is the " proper parish priest " of the Tridentine law of clandestinity?

He is the priest in whose parish at least one of the parties who wish to be married has a domicile or quasi-domicile.[1]

3. What is required for a domicile or quasi-domicile and where have minors a domicile or quasi-domicile?

A domicile is acquired by living in a place with the intention of always living there; a quasi-domicile is acquired by living in a place with the intention of living there for the greater part of a year. Minors retain the domicile of their parents or guardians as long as they do not renounce it. They can also acquire a quasi-domicile of their own.[2]

4. The case. The parents of Henrietta lived in London, while she was educated in a convent in Paris. There she promised to marry a German stranger. After her education was finished Henrietta moved with her mother into a hotel situated in another of the parishes of Paris, and after some weeks she married in presence of the parish priest of this parish. The marriage was invalid if celebrated before April 19, 1908. Henrietta had neither a domicile nor a quasi-domicile in the parish where she married. She retained her London domicile. She was not a *vaga,* nor was her husband; therefore as the decree *Tametsi* bound her in Paris, she required the presence of her own parish priest in London or of his delegate in order to contract a valid marriage in Paris. This was not done,

[1] Manual of Moral Theology, vol. ii, 326.

[2] Ibid., 326 ff.

and so the marriage was invalid. In substance the case is that *In causa Parisien* (Jan. 28, 1899, Analecta Eccles., 1899, p. 15).

The marriage would be valid if it were contracted after April 19, 1908, by virtue of the decree *Ne temere.*

## 26

## GENERAL LEAVE OF PARISH PRIEST

Ursula Dublino orta ubi pater domicilium habebat, iter cum matre in Gallia faciebat. Dum per aliquot menses Parisiis manebat nuptiæ ei offerebantur a Caio qui ibidem habitabat, quas sine mora Ursula cum matris consensu acceptabat. Consensus parentum Caii erat rogandus non tantum ob debitam observantiam sed etiam quia ex præscripto legis civilis matrimonium sine consensu parentum contractum nullius esset effectus. Qui tamen consensum prorsus negabant. Caius adiit parochum et ex eo quod parentes injuste consensum negarent, ei persuadere nitebatur ut nihilominus ad matrimonium se admitteret. Parochus recusabat, simul tamen dicebat se licentiam libenter dare ut coram quolibet sacerdote quocumque loco matrimonium contraheret. De aliis mediis desperantes Caius et Ursula Londinum petierunt et ibidem rogarunt Robertum qui curam habebat ecclesiæ quasi-parochialis ut suo matrimonio benediceret. Unde quæritur:

1. Quæ sint matrimonia clandestina et qua lege prohibeantur?

2. Qualis potestas circa matrimonia Christianorum competat civili potestati?

3. Quid ad casum?

### Solution

The first question was answered above, p. 302–304.

2. What power over Christian marriage has the civil authority?

Leo XIII answers this question in his Encyclical letter *Arcanum*, Feb. 10, 1880: "As then marriage is holy by its own power, in its own nature, and of itself, it ought not to be regulated and administered by the will of civil rulers, but by the divine authority of the Church, which alone in sacred matters professes the office of teaching. Next, the dignity of the sacrament must be considered, for through addition of the sacrament the marriages of Christians have become far the noblest of all matrimonial unions. But to decree and ordain concerning a sacrament is, by the will of Christ Himself, so much a part of the power and duty of the Church that it is plainly absurd to maintain that even the very smallest fraction of such power has been transferred to the civil ruler." Therefore the civil authority has no power over the marriages of Christians; it can not make diriment or prohibitory impediments of marriage, but it can by its laws regulate the civil effects of marriage, such as the right of succession to property, titles, and offices, the property rights of married women, and similar matters.[1]

3. The case. The parties would not altogether escape from the jurisdiction of French civil law by coming to England. For the Marriage with Foreigners Act, 1906, was intended to secure as far as possible that such marriages shall not be celebrated if any legal impediment exists

[1] Gasparri, De Matrimonio, vol. i, 278.

according to the law of either country.[1] However, we may consider the case purely from the point of view of the law of the Church. The fact that the parish priest of Caius gave his permission for the marriage to take place before any priest, indicates that the parents unreasonably refused their consent to the marriage. Such a general delegation, though illicit, was not invalid before the decree *Ne temere* came into force. Therefore, if the case happened before April 19, 1908, after satisfying himself about the freedom of the parties to marry and the reality of his delegation, Robert might have published the banns and undertaken to assist at the marriage in due time. According to *Ne temere*, as he is the parish priest of the place, and he has the leave of the parish priest of the bridegroom, he will be able to assist at the marriage validly and lawfully when he has satisfied himself that the parties are free to marry.

[1] Stephen's Commentaries, vol. ii, 361, 15th edition.

## 27

## REQUISITES FOR MARRIAGE

Titius et Caia Catholici sponsalia rite contraxerant et intra aliquot hebdomadas matrimonium inire volebant. Titius annos viginti duos natus inter socios cujusdam theatri qui de loco in locum vagabantur recensebatur, nec ultra mensem in uno loco commorari solebat. Per mensem fere singulis annis domum paternam in Scotia existentem revertebatur Titius, alias semper cum sociis vagabundus. Caia cum parentibus Mancunii degebat. Titius ad tres hebdomadas sedem apud civitatem Liverpolitanam fixit, ubi ad Lucium sacerdotem accessit et circumstantiis prædictis recensitis quæsivit ab eo ubinam matrimonium celebrare posset, et quid prævie juxta leges ecclesiasticas et civiles esset faciendum. Unde quæritur:

1. Ubinam sit matrimonium celebrandum?
2. Quomodo acquiratur et amittatur domicilium vel quasi-domicilium?
3. Ubinam habeant domicilium filiifamilas?
4. Quid ad casum?

### Solution

1. Where should marriage be celebrated?

Marriage should be celebrated in the Church, and according to the decree *Tametsi* of the Council of Trent (XXIV c. 1, De Ref. Matrim.) in parishes where this decree had

been published the presence of the proper parish priest of one of the parties and two witnesses were necessary conditions of validity. According to the decree *Ne temere*, which came into force April 19, 1908, marriage will be valid if it is celebrated before the parish priest of the place; for its lawfulness it should be celebrated before the parish priest of the bride; or by his permission, or that of the parish priest of the other party, or of the ordinary, it may take place before another priest. A parish priest acquires jurisdiction for the purpose of marriage if one of the parties has a domicile in his parish or has lived there for a month.

2. How is a domicile or quasi-domicile acquired and lost?

We saw above, p. 307 how they are acquired. They are lost when the two conditions which are necessary for their acquirement cease to exist—Omnis res per quascumque causas nascitur per easdem dissolvitur (C. 1, De Reg. Juris.).

The third question was answered above, p. 307.

4. The case. Titius retained his parental domicile in Scotland, and so, according to the Tridentine law, the marriage might have taken place before the parish priest of either of the parties, or before any other priest who had been delegated by either of them. According to the decree *Ne temere*, it should take place at Manchester before the parish priest of the bride. For good reason, it might be celebrated in Scotland before the parish priest of the bridegroom, or before any priest in whose parish Titius had lived for a month. The parish priest of either party, or their ordinaries, might give leave to any other priest to marry them in his parish. The banns should

be published in the parish churches of both parties, and whoever marries them should have evidence of their freedom to marry. The requirements of the civil law must also be complied with. For those in force in England, see "The New Marriage Laws," by Rev. T. Slater, p. 9, C. T. S.

## 28

## SUBJECTS OF THE LAW OF CLANDESTINITY

Caius et Caia Anglicani et matrimonio ab anno juncti petunt ut in gremium veræ Ecclesiæ recipiantur a Paulo loci parocho. Paulus eosdem invenit esse optime in fide Catholica instructos, Caiam quidem catholice baptisatam sed ob mortem matris Catholicæ ab infantia a patre educatam in religione anglicana, et quamvis sint consobrini nihil de validitate sui matrimonii dubitare. Ipse porro rogat quid a se sit faciendum ut tamquam conjuges catholici in ecclesia permaneant. Unde quæritur:

1. Quomodo procedendum in adultis in Ecclesiam recipiendis?

2. Num hæretici subdantur legibus Ecclesiæ præsertim matrimonialibus?

3. Quid ad casum?

### Solution

The first question was answered above, p. 287, and the second, p. 280.

3. The case. The marriage of Caius and Caia was invalid on account of the impediments of clandestinity and consanguinity in the second degree in the collateral line. For the decree *Ne temere* binds all persons baptized in the Catholic Church, even when they contract marriage with non-Catholics, and Caia was baptized in the Catholic

Church. Paul therefore should ask the bishop for a dispensation from consanguinity in the second degree in the collateral line, and in the meantime leave the couple in good faith. When he has received the dispensation, if there is no good reason to the contrary he should tell them of the impediment and at once marry them in presence of two witnesses after he has received them into the Church.

## 29

## THE MONTH'S STAY OF NE TEMERE

Paulus anglicanus petiit in matrimonium Agnetem Catholicam a qua erat etiam acceptus. Quum autem episcopus dispensationem ad mixtum matrimonium ineundum concedere nollet, Agnes ad Titium parochum convolabat consilium in angustiis petitura. Titius vero consuluit ut uterque vel saltem unus ad mensem ædes conduceret in alia diœcesi cujus episcopus erat facilior in dispensando ab isto impedimento. Paulus igitur ædes conduxit in parochia Caii alterius diœcesis presbyteri in quibus quindecim noctibus pernoctabat ac tunc petiit dispensationem ut post banna proclamata matrimonium ibidem celebraretur. Caius vero dubitabat utrum licite illud fieri posset necne. Unde quæritur:

1. Quomodo aliquis fiat subditus episcopi ut ab hoc ejus causæ matrimoniales tractentur?

2. Ubinam banna sint proclamanda?

3. Qualis debeat esse commoratio menstrua ut licite coram parocho loci matrimonium celebretur?

4. Quid ad casum?

### Solution

1. How does any one become subject to a bishop so that his marriage cases are to be tried by him?

For validity it is only necessary that marriage should be contracted within the jurisdiction of the bishop and in

his presence or in that of his delegate and two witnesses. That marriage may be lawfully contracted one of the parties must have a domicile in the diocese or must have lived there for a month.

2. Where must banns be published?

In the parish church or churches of the parties, and in case of those who have recently come from another parish, in that parish as well.[1]

If marriage is contracted in a place where one of the parties has dwelt for a month, according to the decree *Ne temere* the banns should be published there, according to the more probable opinion.

3. What sort of month's stay in a place is required by the decree *Ne temere?*

A full month of thirty days or a calendar month, so that one at least of the parties lives in the place and has lived there uninterruptedly for that period. Absence for a few hours, or during the day time, would not interfere with the month's stay.[2]

4. The case. The doubt of Caius was well founded. Paul is not a Catholic, and the Church does not give dispensations to non-Catholics directly. Besides, Paul has only lived in Caius' parish for fifteen days, and thirty days are required before a bishop can treat a person as his subject for the purposes of marriage. Agnes would be acting within her rights if she went to another diocese, lived there for thirty days, and then asked for a dispensation. Titius, therefore, might lawfully have suggested this course to her.

[1] Manual of Moral Theology, vol. ii, 265.

[2] Vermeersch, *Ne temere*, n. 58.

## 30

## MIXED MARRIAGE

Maria Catholica Episcopi dispensatione obtenta ab impedimento mixtæ religionis Titio anglicano nupsit. Post matrimonium contractum Titius nonobstantibus promissis prohibuit quominus unquam Maria ecclesiam Catholicam intraret et crudeliter eam tractare incœpit, unde Maria ad domum paternam rediit ubi a Paulo viro Catholico in uxorem nunc petitur. Mariæ parochus qui dispensationem ab impedimento mixtæ religionis pro Maria obtinuit, postea certo detexit Titium nunquam fuisse baptisatum, unde quærit utrum Maria sit adhuc libera ita ut Catholicum et felicius matrimonium inire queat. Unde quæritur:

1. Quo jure statuantur impedimenta mixtæ religionis et disparitatis cultus?

2. Quomodo intelligendum effatum—Baptismus dubius censetur validus in ordine ad matrimonium?

3. Num liceat privata auctoritate divortium semiplenum instituere?

4. Quid ad casum?

### Solution

1. By what law are the impediments of mixed marriage and difference of religion established?

Marriages between Catholics and non-Catholics are

forbidden by natural, divine, and ecclesiastical law; if the non-Catholic party is not baptized, the impediment is diriment by custom having the force of universal law.[1]

2. How is the rule to be understood about doubtful Baptism and marriage.

Theologians are not agreed. Lehmkuhl holds that where the Church's authority has intervened in such a case, the words are to be taken quite literally, and that the impediment is removed if it existed on account of the non-Baptism of one of the parties.[2] Wernz, Génicot, and others hold that the rule rests on presumptions, so that if the truth afterwards becomes certain, the presumption ceases.[3]

3. Is separation by private authority *a toro et mensa* allowed?

Yes, by mutual consent for the purpose of leading a more perfect life and when there is no danger of incontinence. The innocent party may separate from the other by private authority if that other has been guilty of certain and notorious adultery, as also for a time on account of serious danger to soul or body.[4]

4. The case. The dispensation for a mixed marriage in all probability did not remove the impediment of difference of religion which really existed between the parties. Indeed the bishops in England as a rule have not authority to dispense from the diriment impediment of difference of religion, though they can dispense in a mixed marriage. Hence, according to the better opinion, Mary's marriage

[1] Manual of Moral Theology, vol. ii, 308 ff.
[2] Theol. Moral., vol. ii, 985.
[3] Manual of Moral Theology, vol. ii, 313.
[4] Ibid., 281.

with Titius was null and void. However, the parish priest may not on his own authority allow her to marry Paul. Both ecclesiastical and civil law stand in the way. He should collect all the evidence that he can, submit it to the bishop, and then await the result.

## 31

## IMPEDIMENT DISPENSED

Titio missionario sacerdoti fuerunt duo parochiani in secundo mixto cum tertio gradu consanguinei qui sponsalibus initis et prole illegitima suscepta contrahere matrimonium voluerunt. Titius dicebat se dispensationem ob prolem legitimandam et ob angustiam loci petiturum, quam mox ab Episcopo obtinuit. Proxima dominica in ecclesia banna fuerunt proclamata et tandem matrimonium fuit contractum, non tamen ante mortem prolis nec ulla fuit mentio sponsis facta de dispensatione obtenta. Quibus auditis Paulus alius missionarius de validitate matrimonii dubitare incœpit. Unde quæritur:

1. Num et qualis causa dispensationis matrimonialis admittatur?
2. Quibusnam angustia loci sit causa canonica?
3. Quomodo sit dispensatio matrimonialis fulminanda?
4. Quid ad casum?

### Solution

1. Are causes for dispensation admitted in matrimonial impediments and what sort?

Not, of course, for impediments of natural or divine law, nor for all impediments of ecclesiastical law, but the Church does admit causes for dispensation from the remoter degrees of consanguinity and affinity, public honesty,

spiritual relationship, occult crime, etc. Canonical causes are required for dispensations, such as: smallness of the place, advancing age of the woman, deficiency or absence of dowry, etc., as put down in the Instruction of Propaganda May 9, 1877.[1]

2. For whom does *smallness of place* serve as a canonical cause?

For the female petitioner alone, as a general rule.[2]

3. How is a matrimonial dispensation to be executed?

No special form is prescribed for the execution of a dispensation. In the internal forum the priest should carefully note and execute the clauses of the rescript, and tell the penitent that he is dispensed. In the external forum, the bishop after the causes alleged for the dispensation and the other particulars have been verified, and the dispensation drawn up and signed, will either execute the dispensation himself by calling the parties before him, absolving them from censures, and telling them that they are dispensed; or he will commit these duties to the parish priest.[3]

4. The case. The impediment under which the parties labored is one of those which are called *minoris gradus*, and from which bishops can usually dispense by special faculties granted to them by the Holy See. We presume, therefore, that the dispensation was granted by the bishop. It took its effect and removed the impediment when the document was signed by the bishop. At that time apparently the child was alive, so that both causes alleged for the dispensation subsisted when it was granted,

[1] Manual of Moral Theology, vol. ii, 339 ff.

[2] Ibid., 343.

[3] Gasparri, De Matrim., vol. i, n. 392 seqq.

and although one of them ceased before the marriage, this fact did not affect the validity of the dispensation. The marriage, therefore, was validly contracted, although the parish priest should have executed the dispensation in the manner described above.

## 32

## A COMPLICATED CASE

Caius matrimonio cum Martha Dublinii contracto post paucos annos uxore domi relicta Americam petiit. Paulo post Martha cæco amore capta Titii acatholici et consanguinei in tertio gradu Caii cum eo luxuriose versata est. Quum jam decem anni elapsi essent et nihil de Caio audivissent Titius valde urgebat ut relicto Dublinio Liverpolium irent. Consentit tandem mulier et ibidem in ecclesia Protestantica ad evitandas quæstiones molestas de libero eorum statu, matrimonium contraxerunt. Postea quum sex annis in urbe commorati essent et liberos suscepissent, audivit Martha a pluribus testibus mediatis quidem at fide dignis Caium in America obiisse. Tempore missionis dolore correpta miserrima ad Joannem confessarium accedit. Audit ipse historiam Marthæ et testimoniis pro morte Caii bene perpensis judicat nihil obstare quominus obtentis dispensationibus matrimonium cum Titio ineat. Quocirca ad rem componendam litteras episcopo scribit, de Titio et Martha concubinariis narrat, pro dispensationibus requisitis supplicat, nihil tamen innuens de Caio forte superstite nec de matrimonio mala fide jam attentato. Unde quæritur:

1. Dubio exorto de impedimento ligaminis cuinam incumbat judicare de statu libero eorum qui matrimonium contracturi sint?

2. Quænam dispensationes requirantur et quænam circumstantiæ explicari debeant in casu pro validitate dispensationum?

3. Quid dicendum de modo agendi Joannis?

### Solution

The first question was answered above, p. 273.

2. What dispensations are required and what circumstances must be explained in the case for the validity of the dispensations?

Titius was not a Catholic, and he was related in the third degree of consanguinity to Caius, the first husband of Martha. Moreover, as there was adultery and attempted marriage by the parties, there exists between them the impediment of crime. Dispensations, therefore, for a mixed marriage, for affinity in the third degree, and for the crime of adultery with attempted marriage will be required. Besides, the evidence cited in the case is not sufficient to produce moral certainty of the death of Caius by itself; and at any rate in such circumstances it is for the bishop to judge whether the party is free or not; a simple priest is incompetent in such a case.[1]

The circumstance that marriage was attempted in bad faith in the Protestant Church must be mentioned in the petition for a dispensation, and this is required for its validity according to the Instruction S. C. de P. F., May 9, 1877.

3. The case. John did very wrong and made several serious blunders. He usurped the office of the bishop by deciding that the parties were free to marry, though

[1] Génicot, vol. ii, 492.

there was not conclusive and first hand evidence of the death of the first husband of Martha. He made no mention of the attempted marriage in bad faith and in the Protestant Church, and from this we may gather that he failed to detect the existence of the impediment of crime between the parties. He should take the earliest opportunity of repeating his Moral Theology.

## 33

## MARRIED A WIDOW WITH THREE CHILDREN

Ad pedes Caii confessarii accedens Balbus Catholicus facta sequentia exponit. Nunc annos triginta natus anno præcedenti spretis legibus ecclesiæ matrimonium contraxerat coram ministro Protestantico cum Titia acatholica vidua quadragenaria et tribus liberis onerata ex priori conjugio. Nec fuerunt ignari impedimentorum, nam Balbus erat consanguineus Titiæ in tertio gradu collaterali inæquali mixto cum secundo, et præterea rem habuerat cum Bertha sorore Titiæ. Balbus nunc pœnitens petit a Caio ut dispensationibus obtentis rem componat, peccatum vero cum Bertha Caio soli revelasse affirmat.

1. Quodnam sit discrimen inter impedimentum publicum et occultum?

2. Quænam sint rationes præcipuæ quas S. Sedes habere solet sufficientes ad dispensationes concedendas?

3. Quomodo possit dispensatio invalida evadere ob subreptionem vel obreptionem?

4. Quot dispensationes sint requisitæ in casu; quænam causæ possint a Caio allegari; quid a Caio faciendum?

### Solution

1. What is the difference between a public and occult impediment?

Public impediments are those which of their own nature or in fact are known to the greater number of people in

the parish, and can be proved by witnesses; occult impediments are those which can not be proved by the evidence of two witnesses.

The second question was answered above, p. 322.

3. How can a dispensation become invalid by subreption or obreption?

Subreption is the omission of what should be mentioned; obreption is a false statement. Subreption or obreption in the petition for a dispensation render it invalid if they occur in the motive cause, not if they occur in the impulsive cause for granting a dispensation.[1]

However, dispensations *minoris gradus* are granted by the S.C. on the discipline of the Sacraments *ex motu proprio et ex certa scientia,* and are not invalid on account of subreption or obreption.[2]

4. How many dispensations are required in the case; what causes may be alleged by Caius; what is to be done by Caius?

There is the prohibitory impediment of mixed marriage, the public impediment of consanguinity in the third degree mixed with the second in the collateral line, and the occult impediment of affinity *ex copula illicita* in the first degree of the collateral line on account of the sin with Bertha.

As Titia is not a Catholic no account can be taken of her in asking for a dispensation. Putting a stop to grave scandal, and open and incestuous concubinage, may be alleged as causes for a dispensation. The marriage in bad faith before the Protestant minister should also be mentioned, though it may make the dispensation more difficult to obtain. Caius should first ask the

[1] Manual of Moral Theology, vol. ii, 342.

[2] Normæ Peculiares, Sept. 29, 1908.

bishop for a dispensation for the mixed marriage, and the impediment of consanguinity, without mentioning the occult impediment. He should then apply to the Penitentiary in Rome for a dispensation from the occult impediment, mentioning the other public impediments in the case.[1]

[1] Gasparri, De Matrim., vol. i, n. 327.

## 34

## WHICH BISHOP HAS JURISDICTION?

Titius Catholicus qui degebat in vico quodam diœcesis A. sponsalia iniit cum Bertha sui consobrini filia acatholica, quæ in parvo vico habitabat diœcesis B. Quo facilius sponsam inviseret et ut loco ubi laborabat esset propinquior, ad tres menses ædes conduxit Titius in vico Berthæ. Quum fornicationem commisissent et matrimonium esset urgendum ob expectatam prolem, ad Julium missionarium loci accessit Titius et petiit ut dispensationes necessarias obtineret, quum frustra peteretur dispensatio ad mixtum matrimonium ineundum in diœcesi propria. Julius invenit Bertham habere viginti sex annos, optime esse dispositam ad fidem amplectendam, nolle tamen eam amplecti ante matrimonium ob repugnantiam parentum. Unde quæritur:

1. Quænam in genere sint in supplici libello exprimenda quando dispensatio matrimonialis petatur?

2. Quænam existant impedimenta et quænam causæ dispensationis dandæ in casu allegari possint?

3. Quid ad casum?

### Solution

1. What in general must be inserted in the petition for a dispensation?

The name and surname of the petitioners, the diocese of birth or domicile, the species and number of impediments,

the degree of consanguinity, affinity, etc., and various circumstances.[1]

2. What impediments are there in the case, and what causes may be alleged for the dispensation?

The parties are related in the third degree of consanguinity mixed with the second in the collateral line, and they are of different religions, so there are two impediments, consanguinity and mixed religion. As Bertha is not a Catholic, no account can be taken of her when asking for a dispensation. Previous connection, pregnancy, and legitimization of offspring, danger of a civil or non-Catholic marriage, may be alleged as causes for the dispensation.

3. The case. If Titius has not yet lived in the diocese B for a month, the bishop of that diocese has no jurisdiction with regard to his marriage or granting the dispensation. If he has lived there for a full month he can be married there according to the decree *Ne temere*. Most probably the same bishop also obtains jurisdiction over Titius by his month's stay in the diocese so that he can grant dispensations for impediments which hinder his marriage. Otherwise the bishop of diocese A will alone be competent to grant the requisite dispensations, unless Titius is prepared to go direct to the Holy See.[2]

[1] Manual of Moral Theology, vol. ii, 346.

[2] Vermeersch, *Ne temere*, n. 98 bis.

## 35

## REVALIDATION OF MARRIAGE

Anna religione anglicana per aliquot hebdomadas degebat quodam loco ad quem valetudinis causa multi confluere solent. Ibi petit a Philippo loci missionario Catholico ut in Ecclesiam recipiatur. Philippus invenit eam optime instructam et bene dispositam et nihil videri obstare quominus statim in Ecclesiam recipiatur. Attamen invenit eam matrimonio esse conjunctam cum consobrino pariter anglicano qui putat matrimonium esse validum et nullatenus consentiret iterum publice vel privatim renovare consensum. Unde quæritur:

1. Quinam subjiciantur legibus Ecclesiæ matrimonialibus? Num hæretici?

2. Num ignorantia vel incommodum grave ab impedimento dirimente matrimonii excuset?

3. Ad quem sacerdotem spectet tractare causas matrimoniales?

4. Quid a Philippo faciendum?

### Solution

The first question was answered above, p. 292.

2. Does ignorance or grave inconvenience excuse from a diriment impediment of marriage?

Neither ignorance nor a grave inconvenience, affecting

individuals only, excuses from a diriment impediment. A grave inconvenience of a public nature does excuse.[1]

3. To whose office does it belong to treat of marriage cases?

Marriage is a parochial sacrament and it belongs to the parish priest to treat of anything concerning it. Where there are several priests who have the cure of souls in one parish, it belongs to the head priest to treat of marriage cases, but with due dependence on him the others may also undertake them.

4. The case. Ann's marriage with her cousin was invalid on account of the diriment impediment of consanguinity in the second degree of the collateral line. It is of its own nature a public impediment, and if Ann does not know of it now, she may find it out at any time. To prevent future difficulties it should be revalidated, and also because if the parties are in good faith, even material sins should be prevented as far as possible. Philip therefore should write to the bishop of the diocese in which Ann is staying, if she has been there for at least a month, and where she will be received into the Church, and ask him to grant a dispensation for revalidating a mixed marriage between cousins in favor of one who has been converted. The dispensation should be granted to take effect when it is executed. Ann should induce her husband to appoint a proxy for him; it is to be presumed that he will do at least this to please his wife. Then on the day on which Ann is received into the Church, Philip can execute the dispensation at once, and revalidate the marriage by causing Ann and the proxy to go through the form of marriage before him and two witnesses. If

[1] Manual of Moral Theology, vol ii, 285 f.

Ann has not lived at the place for a full month, she should be received into the Church and dispensed in her own diocese, unless her bishop has power to dispense his subjects during their absence from the diocese, as bishops sometimes have.[1]

[1] Pützer, Comment. in Facult. Apostol., n. 52.

## 36

## COHABITATION OF MARRIED PEOPLE

Caia Catholica et uxor Titii Protestantici, officialis in quadam colonia, venit in patriam ut invigilet circa educationem filiarum in conventu monialium habendam, quo fine ducta prope conventum habitat. Post aliquot menses Titius rogat imo jubet ut ad ipsum revertatur, Caia tamen semper se excusat eo quod debeat educandas filias ipsa curare, ac tandem Titius publice concubinam sibi assumpsit. Quo audito Caia de præterito ac futuro anxia petit a confessario utrum teneatur ad maritum revertere. Unde quæritur:

1. Quænam sint obligationes conjugum quoad cohabitationem?

2. Num liceat publica vel privata auctoritate divortium semiplenum instituere?

3. Utrum pares sint in juribus quoad semiplenum divortium maritus et uxor?

4. Quid ad casum?

### Solution

1. What are the obligations of married people with regard to cohabitation?

From the nature of the marriage contract and to secure the ends of marriage those who are married are bound to live together, unless by mutual consent they agree to live

apart for a time and there is no danger of scandal or incontinence. This obligation is one of justice and is grave in serious matter.[1]

The second question was answered above, p. 266.

3. Are husband and wife equal in the matter of rights about separation?

In general, husband and wife are equal in the matter of conjugal rights, though the husband as head of the family has authority over her and is her superior. The causes then, such as adultery, on account of which one consort is allowed to separate from the other, favor husband and wife equally. Because the husband has the duty of providing for the family, lawful causes of absence from his wife will more frequently exist in his case than in hers, and because of this and of her inferior position the wife will be called upon in general to follow her husband, and not *vice versa*.

4. The case. Titius was a colonial official, and his wife Caia went to the mother country to see to the education of her daughters. She put her daughters in a convent and took up her residence in the neighborhood. Her husband sent for her but she refused to go, under the pretext that she had to look after the education of her daughters. She became uneasy in conscience when she heard that her husband was living with another woman.

Caia's uneasiness was justified. Her husband bade her come out to him and she had no good reason for refusing. The education of her daughters would probably proceed better without her presence than with it. Objectively she committed a grave sin in not obeying her husband and exposing him to the danger of incontinence.

[1] Génicot, vol. ii, n. 552 ff.

She is bound to do what she can to repair her fault and bring back her husband from his sinful course of life. But now on the supposition that Caia knows for certain that her husband has committed adultery she has the right to separate from him. Although her disobedience was the occasion of his sin, yet we must not presume that she acted as she did with the view of making him commit adultery, and on that supposition she did not lose her right to separate from her husband on account of his adultery.[1]

[1] Gasparri, De Matrim., vol. ii, n. 1113.

## 37

## A TROUBLED WIFE

Caius confessarius rogat quid a se sit in casu sequenti faciendum. Ad confessionem accessit Titia conjux Titii quos bene utpote parochianos cognovit Caius. Post confessionem peractam Titia rogabat utrum congressus maritalis quin maritus opus debite perficeret licitus esset. Quum Caius negasset respondit Titia maritum id affirmare imo sæpe ex consilio medici propter debiles uxoris vires, quæ pariendi et nutriendi prolem sit minus capax, ita agere. Tacuit tunc Caius, sed crevit difficultas quum mox ad confessionem accesit Titius nec tamen verbum de re cum uxore male gesta dicebat. Unde quæritur:

1. Num constet onanismum esse peccatum et quale?

2. Quod consilium sit uxoribus dandum anxiis de onanismo a maritis patrato?

3. Num monendi sunt pœnitentes in bona fide constituti de male a se patratis?

4. Quid ad casum?

### Solution

1. Is it certain that onanism is a sin and what sort?

From the way in which Holy Scripture mentions it (*Gen.* xxxviii. 9), from the teaching of the Church, and

because it is a gross perversion of nature, it is certain that onanism is a grave sin.[1]

2. Quod consilium sit uxoribus dandum anxiis de onanismo a maritis patrato?

Monendæ sunt ut faciant quod in se sit ut mariti debito modo actum perficiant, quod si non succedant, modum ne approbent, et licite materialiter tantum cooperentur in peccatis maritorum.[2]

3. Are penitents to be admonished who in good faith do what is wrong?

They must be admonished if what they do is a cause of public scandal, or if their good faith is not perfect and they are doubtful about the matter. They must be admonished also if in all likelihood they would obey the admonition. If the admonition would be productive of more harm than good it should not be given.[3]

4. Ad casum. Quamvis bona fides circa liceitatem onanismi non sit prorsus impossibilis etiam apud Catholicos, attamen ad longum tempus perdurare vix potest. Episcopi enim et sacerdotes imo et honesti laici claris verbis et scriptis illud crimen condemnare solent. Quando igitur Titius ad confitendum accedit, nec tamen de onanismo quidquam dicit, debet Caius generalibus verbis eum interrogare num aliquid habeat quod conscientiam remordeat, vel aliquid simile. Quod si neget Titius, videtur Caium posse acquiescere ac absolutionem impertire. Credendum enim est pœnitenti tum pro se tum contra se loquenti. Nec licet Caio manifestare quod ex Titiæ confessione audivit. Si vero Titia iterum rei mentionem

[1] Manual of Moral Theology, vol. ii, 363.
[2] Ibid., 363.
[3] Ibid., 223.

ingerat, debet Caius aperte dicere rem esse prorsus illicitam, Titiam oportere facere quod possit ut maritum corrigat, ac si nihil proficiat eam posse materialem cooperationem præstare actui quem impedire non valeat. Quoad pericula vero sanitati vel etiam vitæ quæ medici aliquando exaggerare solent Titia se Deo committat.[1]

[1] Bucceroni, Theol. Moral., vol. ii, n. 824; Génicot, vol. ii, n. 551.

## 38

## A HUSBAND IN DIFFICULTIES

Caius confessario narrat se esse anxium de modo agendi cum propria uxore. Hæc enim, ait, valde est debilis, imo medicus quidam peritus eam nonnisi cum proximo periculo mortis iterum parituram declaravit. Ipse Caius e contra robustus est, et vix ullam spem se continendi habet. Imo sæpe tactibus impudicis cum uxore in lectulo indulsit, unde non raro pollutionem est passus; aliquando copulam incepit nec tamen perfecit ob metum ne proles generaretur. Vult hæc omnia quatenus peccaminosa confiteri, et consilium de futuro humiliter rogat. Unde quæritur:

1. Quænam sint obligationes maritales conjugum, et quænam ipsis permittantur?

2. Num quocumque tempore copula habeatur æqua sit spes prolis generandæ.

3. Quid ad casum?

### Solution

1. Quænam sint obligationes maritales conjugum, et quænam ipsis permittantur?

Conjux sub gravi tenetur alteri rationabiliter petenti reddere debitum conjugale, ac proinde simul cohabitare conjuges regulariter obligantur. Præterea signa conjugalis amoris sunt a conjugibus mutuo exhibenda. Quæ iis licent in sequenti regula continentur: "Quod utile est ad actum conjugalem exercendum licet; quod est

contra prolis generationem vel tendit ad illam impediendam est graviter illicitum; quod non est contra prolis generationem, quamvis sit præter illam, saltem non est graviter illicitum." [1]

2. Num quocumque tempore copula habeatur æqua sit spes prolis generandæ?

Res est incerta. Aliqui putabant tempus inter duos dies ante menstruationem et quatuordecim dies post esse magis aptum ad prolem certius generandam, ac proinde si conjuges nolint prolem ex copula sequi eos posse evitare hoc temporis spatium et copulam exercere extra illud. Nihil prohibet quominus ita faciant, sed utrum finem intentum adepturi sint valde dubium est.[2]

3. Ad casum. Tactus ita impudicos exercere ut proximum pollutionis periculum inducatur etiam conjugibus sub gravi prohibetur. Tactus non ita impudicos exercere citra proximum periculum pollutionis quamvis aliquando pollutio sequatur cui tamen non consentitur nec quæ intenditur non censetur sub gravi conjugibus prohibitum, ne sub veniali quidem dummodo sit causa justa, qualis est amor conjugalis fovendus. Juxta has regulas judicium est ferendum circa tactus impudicos a Caio exercitos. Copulam incipiendo nec tamen perficiendo ob metum prolis generandæ onanistice et graviter Caius peccavit, nisi experientia ipsi constet eum posse ita agere sine proximo periculo pollutionis.[3]

Quoad futurum Caius honesto et debito modo officia maritalia exerceat, se ipsum ac uxorem magna cum fiducia Deo committendo.

[1] Manual of Moral Theology, vol. ii, 362.
[2] Génicot, vol. ii, n. 551.
[3] Ibid., 551.

## 39

## UNWILLING TO RETURN TO HER HUSBAND

Titia Catholica petit a confessario utrum ad Titium maritum revertere teneatur in sequentibus circumstantiis. Titius multo semper fuit veneri deditus ita ut per vitam maritalem singulis fere noctibus et aliquando bis vel ter eadem nocte debitum peteret quod etiam verberibus uxori exigeret. Tantam abominationem erga maritale debitum ac erga Titium concipiebat Titia ut separationem a toro et mensa ob viri sævitiem obtineret qui etiam ob amentiam excessu venereo causatam in asylum esset detrusus. Post annum sanitate recuperata Titius asylum reliquit et statim petiit ut uxor ad se reverteret. Titia eamdem ac antea abominationem invincibilem adhuc experta ad eum redire non vult nisi sub gravi peccato ad id teneatur. Unde quæritur:

1. Quid sit divortium semiplenum et quas ob causas permittatur?

2. Num tale divortium in curiis civilibus peti possit?

3. Causa divortii cessante num pars innocens ad vitam maritalem redire teneatur?

4. Quid ad casum?

### Solution

The first question was answered above, p. 266 f. and the second, p. 268.

3. When the cause for separation ceases is the innocent party bound to return to marital life?

There is question here only of those causes which give a right to temporary separation between married people, and the general rule is that after the cause of separation has ceased, the party who took advantage of it to separate must return again to married life. However, the following words of St. Alphonsus have a practical bearing on the case before us: "Notant autem Salmanticenses n. 40 cum Dic., in praxi vix credi posse quod cesset unquam periculum si conjux fuerit amens, et furiosus, vel ita pronus ad iram ut sæpe intervenerit periculum damni et aliquando uxorem vulneraverit." [1]

4. The case. The feeling of disgust which Titia feels for her husband would not of itself justify her in refusing to return to him. But if we consider the circumstances of the case, the tendency of the husband to excess, the probability that this tendency will again cause cruelty to his wife and perhaps bring on insanity again, Titia does not seem to be under the obligation of returning to her husband. The words of Dicastillo quoted by the Salmanticenses are appropriate: "Non possum tamen non videre aliquas ex his causis vix tuto posse credi cessasse omnino. Insanus et furiosus quam facile potest iterum insanire?"

[1] Theol. Moral., lib. vi, 971.

# CENSURES

## 1

## A MISTAKE IN THE MAN

Caius missionarius sacerdos graviter Titium parochianum offendit ejus vitia arguendo. Postea dum cum sociis bibebat eis verba Caii probrosa repetebat Titius ac eum pœnam luiturum affirmabat. Dum noctu domum revertebatur obviam ibat sacerdoti quem Caium putabat, et pede inter ejus crura interposito impulsu humeri in via publica prosternebat. Postridie in ephemeride legit Paulum sacerdotem ac Caii adjutorem fregisse brachium cadendo in loco ubi Titius sacerdoti obviam fiebat ac postea nihil mali Caio qui domi manebat accidisse certior est factus. Proxima hebdomada facti pœnitens ad confessarium accessit Titius et quid fecisset magno cum pudore est confessus. Unde quæritur:

1. Quid sit privilegium canonis et num lex sit pœnalis an prohibens?

2. Quinam sit hujus privilegii finis et quomodo sit interpretandum?

3. Num error circa personam cui injuria inferatur prohibeat quominus sit injuria formalis et actus voluntarius?

4. Quid ad casum?

SOLUTION

1. What is the privilege of the Canon and is it a penal or prohibitory law?

The privilege of the Canon grants to all ranks of the clergy and to religious Orders personal inviolability, so that any one who unlawfully uses violence against them incurs excommunication, the absolution of which is reserved to the Pope. It is a law which both prohibits and penalizes such violence.[1]

2. What is the object of this privilege and how is it to be interpreted?

The object is to safeguard the dignity and honor of the clerical state. In accordance with this object it must be interpreted favorably, and as widely as possible.

3. Does a mistake about the person injured prevent the injury being formal and the act voluntary?

Many teach that it does on the ground that there was no intention to injure this person, and so the act is casual, not voluntary, with respect to him.[2]

4. The case. Titius certainly committed a grave sin by his unwarranted and malicious act. The excommunication, however, inflicted now by the second of the censures reserved to the Pope by the Constitution of Pius IX, *Apostolicæ Sedis*, must be interpreted strictly with regard to the conditions which are necessary that it may be incurred. As many authorities of weight deny that an injury inflicted by mistake on the wrong person is voluntary, and an action which is involuntary is not punished by censure, therefore Titius did not incur the excommunication.

[1] Manual of Moral Theology, vol. i, 130.

[2] St. Alphonsus, lib. iii, n. 628.

## 2

## PAROCHIAL RIGHTS

Caius sacerdos et religiosus qui quamvis non habeat curam animarum facultatibus tamen Ordinarii gaudet administrandi, de licentia presbyteri curam animarum exercentis, sacramenta Baptismi, Matrimonii, Extremæ Unctionis, et S. Viaticum, vocatur ad amicum Paulum qui periculose decumbit. Caius quidem scit presbyterum qui ibidem curam animarum exercet obstinate suis juribus stare, et exigere ut sua licentia toties quoties petatur, attamen ex eo quod presbyter ipsi videatur irrationabilis, quin licentiam petat, ad amicum ægrotum convolat et ultima sacramenta ei administrat. Quem propterea ejus superior reputat excommunicatum, ac præcipit ut prius petat absolutionem a censura quam Missam celebret. Unde quæritur?

1. Quid sit censura?
2. Quinam sint effectus excommunicationis?
3. Explicetur censura de qua in casu.
4. Quid ad casum?

### Solution

1. What is a censure?

A censure is a spiritual and remedial penalty by which a baptized and contumacious delinquent is deprived by

ecclesiastical authority of the use of certain spiritual advantages.[1]

2. What are the effects of excommunication?

Excommunication deprives the excommunicated person of the use of the sacraments, sacramentals, and indulgences of the Church, of public suffrages and prayers; of the administration of the sacraments; of participation in the liturgical offices; of ecclesiastical jurisdiction; of the right to ecclesiastical burial; and it makes null and void presentation to a benefice, or the conferring of an ecclesiastical dignity with jurisdiction annexed to it.[2]

3. Explain the censure to which the case alludes.

The fourteenth excommunication of those reserved to the Holy See by the Constitution *Apostolicæ Sedis* is as follows: "Religiosos præsumentes clericis aut laicis extra casum necessitatis Sacramentum Extremæ Unctionis aut Eucharistiæ per viaticum ministrare absque parochi licentia." The terms of this censure should be strictly interpreted and therefore any ignorance or good faith will excuse a person from incurring it, and probably it is not incurred in countries like Great Britain and most parts of the United States, where parishes have not yet been erected and where therefore there are not parish priests.[3]

4. The case. Caius may be excused from the censure because he acted to some extent in good faith, inasmuch as he thought the priest of the place an unreasonable stickler for his rights. Even if we grant that this idea of his was false, nevertheless it prevented him from *presuming* in the technical sense. If there are no parish

[1] Manual of Moral Theology, vol. ii, 367.

[2] Ibid., 377.

[3] Génicot, vol. ii, n. 604; Sabetti, n. 1002.

priests in the place where the case happened, Caius may be excused on this ground also. However, he did wrong in intruding into the district assigned to another without leave. His Superior, therefore, was justified in forbidding him to say Mass until he had obtained absolution. The Superior regarded him as under censure in the external forum.

## 3

## A FALLEN PRIEST

Caius sacerdos provinciæ Angliæ ebrietati aliisque vitiis cœpit indulgere, obligationes quoque clericales negligens theatrum publicum ubi scenica spectacula agebantur invisit. Paulo post facultatibus ab Episcopo privatus secessit in Scotiam ubi munera sacerdotalia sub alio Episcopo iterum exercere incepit. Quæ omnia Titius Caii confessarius quum didicisset inde dubitabat quid esset faciendum, nam Caius numquam absolutionem petierat a quolibet censuræ propter frequentationem theatri in Anglia sacerdotibus impositæ. Hinc quæritur:

1. Qualis pœna propter frequentationem theatri sacerdotibus Anglicis imponatur?
2. Quinam sint suspensionis effectus?
3. Quomodo censura cesset?
4. Quid ad casum?

### Solution

1. What penalty is imposed on English priests for frequenting the theater?

The Fourth Council of Westminster decreed as follows: "We strictly prohibit ecclesiastics who have received sacred Orders from being present at stage representations in public theaters, or in places temporarily made use of as public theaters, under the penalty to transgressors of

suspension to be incurred *ipso facto* such as has hitherto been the rule in all parts of England with reservation to the respective ordinaries." [1]

2. What are the effects of suspension?

Total suspension deprives the cleric of the use of all sacred Orders, the exercise of his office, and the fruits of his benefice.[2]

3. How does a censure cease?

As a general rule a censure which has been incurred only ceases when absolution has been obtained by the delinquent from one who is competent to give it. Sometimes, however, a censure is imposed to last as long as certain conditions last, and then on the termination of those conditions the censure ceases.[3]

4. The case. Caius incurred suspension reserved to his bishop by going to the theater. He had never been absolved from this censure. His confessor Titius, or else Caius himself, should write to his former bishop and ask him for powers to put Caius straight. On the receipt of those powers Titius may deal with the case. In the meantime Caius should abstain from the exercise of his office as a priest under pain of grave sin. If since his suspension he has exercised sacred Orders solemnly, he has incurred irregularity from which he must be dispensed before again exercising his functions.

[1] Manual of Moral Theology, vol. i, 614.
[2] Ibid., vol. ii, 380.
[3] Ibid., 373.

## 4

## COUNTENANCING A DUEL

Caia venit ad Paulum missionarium in Anglia sacerdotem ad confitendum cui manifestabat se anno elapso in Italia duello astitisse ut amicum duello pugnantem roboraret. Caia porro dicebat se absolutionem a parocho in Italia non potuisse obtinere quum hic affirmaret casum esse Papæ reservatum. Interroganti etiam Paulo Caia respondit se scivisse Ecclesiam sub pœnis omnem in duello participationem prohibere, at se opus caritatis posuisse quod recusare esset inhumanum, imo se iterum in iisdem circumstantiis idem facturam. Paulus vero vult scire quid in casu facere possit ac debeat. Unde quæritur:

1. Quid sit censura et quænam conditiones requirantur ut incurratur?

2. Quomodo censura cesset?

3. Quid sit insordescentia in censura et quosnam effectus producat?

4. Quid ad casum?

### Solution

1. What is a censure and what conditions are required for incurring it?

The first part of the question was answered above, p. 349.

The conditions required that a censure may be incurred are: a sin grave internally and externally, completed, not altogether past, and committed with contumacy.[1]

The second question was answered above, p. 353.

3. What is *insordescence* in a censure and what effects does it produce?

Insordescence is the obstinate remaining of an excommunicated person in his excommunication for a whole year without absolution. The Council of Trent decreed (Sess. XXV, c. 3 de Ref.) that such a person might be proceeded against as suspect of heresy. If he does not purge his heresy he should be declared a heretic after the lapse of another year.[2]

4. The case. The third of the excommunications reserved to the Pope by the Constitution *Apostolicæ Sedis* is couched in these terms:

"Duellum perpetrantes, aut simpliciter ad illud provocantes, vel ipsum acceptantes, et quoslibet complices vel qualemcumque operam aut favorem præbentes, necnon de industria spectantes, illudque permittentes, vel quantum in illis est non prohibentes, cujuscumque dignitatis sint, etiam regalis vel imperialis."

It is obvious, therefore, that Caia had incurred this censure by being a spectator of the duel with the intention of giving courage to her champion. She seems also to have had sufficient knowledge that she was doing something prohibited under censure by the Church. She is not yet penitent, and Paul's first task will be to try to make her see the gravity of her sin and express her sorrow and repentance for it. When she is disposed he will be able to absolve

[1] Manual of Moral Theology, vol. ii, 369.

[2] Lehmkuhl, vol. ii, n. 1148.

her by virtue of the special faculties which confessors in England receive through their bishop from the Holy See. She does not seem to have fallen into insordescence, for she tried to get absolution before, and the case does not state that she remained a whole year under excommunication.

## 5

## A MASONIC BALL

Quodam in oppido Anglico celebrabatur saltatio Massonica ut pecunia colligeretur danda hospitiis publicis oppidi. Invitabantur ad saltationem cives præstantiores inter quos Lucius Catholicus, qui ibat et summam pecuniæ solvebat quia, ut ait, improbum esset habere inimicos ita potentes concives. Postea tamen rem confitetur suo confessario qui dubitat utrum Lucius propterea censuræ subsit. Unde quæritur:

1. Quæ pœna statuatur contra societates secretas?

2. Quænam soc etates censeantur prohibitæ? Num *Fenians?* Num *Oddfellows?*

3. Num secta Massonica in Anglia comprehendatur lege ecclesiastica de dicta secta?

4. Quid ad casum?

### Solution

1. Under what penalty are secret societies forbidden?

They are forbidden under pain of excommunication reserved to the Pope by the Constitution *Apostolicæ Sedis* (n. 4): "Nomen dantes sectæ Massonicæ aut Carbonariæ, aut aliis ejusdem generis sectis quæ contra Ecclesiam vel legitimas potestates seu palam, seu clandestine machinantur; nec non iisdem sectis favorem qualemcumque præstantes; earumve occultos coryphæos

ac duces non denunciantes, donec non denunciaverint." [1]

2. What societies are forbidden? Are the Fenians and Oddfellows?

All societies are forbidden by the above censure which publicly or in secret plot against the Church or against lawful civil authority. In general a society which enjoins the keeping of a secret so absolutely that it may not be revealed even to ecclesiastical authority, or which exacts an oath or promise of blind obedience, must be regarded as forbidden. By a decree of the Holy Office, Jan. 12, 1870, the Fenians were declared to be comprised in the above censure. The American Oddfellows were condemned Aug. 20, 1894. Whether or not they are condemned under the above censure is disputed. English Oddfellows do not form one society with the American Oddfellows, and so it can not be said for certain that they are condemned.

3. Are Freemasons in England condemned by the above censure?

Yes, English Masons are recognized by their foreign brethren as such, and foreign Masons are received in the English lodges. Renunciation of Masonry is imposed as a condition of being received into, or reconciled to the Church.

4. The case. The question whether Lucius incurred the censure or not, will depend on whether his going to the ball and paying the money brought him under the clause—*iisdem sectis favorem qualemcumque præstantes.* To incur censure under this head the favor must be shown

[1] Manual of Moral Theology, vol. ii, 399.

to them as Masons, and with effect, so that the censure is not incurred unless the effect follows.[1]

There is no evidence in the case that Lucius did this. He gave money to the hospitals, and he went to the ball because he was afraid of offending the Masons. Although these actions might in certain circumstances be described as *favorem præstantes*, favoring the Masons, there is no evidence that in effect they did so in Lucius' case. He did wrong, and probably gave great scandal, but he did not necessarily incur excommunication.

[1] Ballerini-Palmieri, Opus Morale, vol. vii, 220.

## 6

## A SPECIAL INTERDICT

Caius sacerdos missionarius in diœcesi quadam Angliæ vult scire utrum posset absolvere hominem recenter ab Episcopo alterius diœcesis cujus erat subditus a sacramentis inhibitum, dummodo esset rite dispositus sive esset impeditus quominus ad suum episcopum accederet sive non. Post trinam enim monitionem episcopus edixit: "I hereby inhibit him from approaching the sacraments, and forbid my priests to administer them to him, until he shall have proved his orthodoxy to the satisfaction of his ordinary." Unde quæritur:

1. Quid sit interdictum, et quænam sint ejus species diversæ?

2. Quid sit censura *ab homine*, et quis ab ea absolvere possit?

3. Num suspenderetur pœna inflicta si delinquens appellaret ad S. Sedem, quod fecisse videtur?

4. Quid ad casum?

### Solution

1. What is an interdict, and what are its different species?

An interdict is a censure which prohibits the use of liturgical offices, some sacraments, and ecclesiastical burial. It is local, personal, or mixed, as it immediately

affects the place, certain persons, or both. It is general or special, total or partial.[1]

2. What is a censure *ab homine*, and who can absolve from it?

A censure *ab homine* is imposed not by a permanent law, but by a particular precept or sentence of an ecclesiastical superior. Absolution from such a censure can only be had from him who inflicted it, from his Superior or successor in office, or from one delegated by one of these.[2]

3. Would the penalty inflicted be suspended by an appeal to the Holy See?

No, not when the penalty has been inflicted already. In that case there is only an appeal *in devolutivo*, or a simple recourse to the Holy See.[3]

4. The case. The question is whether a priest of another diocese may absolve the subject of a bishop who had interdicted the latter the sacraments until he had given satisfaction to his ordinary, and who had forbidden his priests to administer the sacraments to him. The answer is No. Such a special and personal interdict is a censure *ab homine*, and it can only be absolved by the person who imposed it, by his Superior or successor in office, or by some one delegated by one of these. The delinquent therefore must comply with the condition imposed, satisfy his ordinary as to his orthodoxy, and then he will be able to receive the sacraments like the rest of the faithful.

[1] Manual of Moral Theology, vol. ii, 382.
[2] Ibid., 373.
[3] Bucceroni, Theol. Moral., vol. ii, n. 1096.

## 7

## IS HE TO BE AVOIDED?

Decreto Vicariatus Urbis 29 Oct. 1907, sub culpa lethali illicitum edicebatur vendere, legere, vel retinere librum cui titulus *Il programma dei modernisti*. Eodem decreto Pius X "auctores et scriptores ceterosque omnes qui quoquomodo ad hunc librum conficiendum operam contulerunt excommunicationis sibi soli reservatæ pœna" affecit. Additit Sanctissimus hoc decretum valere perinde ac si traditum esset in manus uniuscujusque ex dictis auctoribus et scriptoribus, eosque si sacerdotes sint et actum Ordinis exerceant in irregularitatem incursuros. Titius igitur sacerdos qui notas quasdam scriptoribus istius libri præbuit rogat utrum sit propterea nominatim excommunicatus, et quibusnam effectibus sive excommunicationis sive irregularitatis subjiceretur si officia sacerdotalia peragere præsumat excommunicatus. Petitur ut Titio quantum fieri poterit satisfiat.

### Solution

Titius furnished some notes for the composition of the book entitled *Il programma dei modernisti* with knowledge of the use to which they were to be put, as we presume. Pius X excommunicated the authors and all others who in any way helped to compose this book. Titius therefore fell under the excommunication. He wished to know

whether he was excommunicated by name and to be avoided. The answer is No, for as Génicot says: " Non sunt vitandi quilibet excommunicati notorii vel qui tantum cum aliis ejusdem criminis participibus generali quadam expressione declarati sunt excommunicati, sed non sunt designati proprio nomine vel titulo qui nomini æquivaleat " (II, 581).

Titius further wishes to know what would be the consequences of his performing priestly duties in spite of the excommunication. As being under excommunication he would commit grave sin if without necessity and without being asked to do so by the faithful, he were to administer the sacraments of his own accord. He would also commit grave sin if he were to say Mass. By solemnly exercising these functions of a priest Titius would also incur irregularity, and if he remained under censure for a whole year without seeking absolution, he would become suspect of heresy.

## IRREGULARITY

### A PRIEST PRACTISING MEDICINE AND SURGERY

Caius medicus seculi vanitatibus renunciavit ut ordinem religiosum ingrederetur. Factus sacerdos quando vocatur ad infirmos remedia præscribere apta morbis corporalibus non hæsitat, ita ut non raro medeatur tum animis tum corporibus parochianorum ægrorum. Domesticis etiam data opportunitate idem præstat; imo semel subito in periculo alicujus brachium amputavit. Alii tamen religioso ejusdem ordinis dubium occurrit utrum hæc omnia sint sacerdotibus licita. Unde quæritur:

1. Num et quatenus ars medica et chirurgica clericis prohibeatur?

2. Num et quomodo posset sacerdos exercens istas artes incurrere irregularitatem?

3. Quid ad casum?

#### Solution

1. Are clerics forbidden to practise medicine and surgery, and how far?

According to the common opinion clerics are forbidden to practise medicine and surgery without an indult of the Holy See. Some, however, restrict the prohibition to studying medicine and surgery, and practising surgery.[1]

[1] Génicot, vol. ii, n. 36.

2. If a priest practised medicine and surgery could he become irregular and how?

He would become irregular if death followed from his performing a surgical operation which he is forbidden to do.[1]

3. The case. Caius had better restrict himself as a general rule to looking after the souls of his parishioners, and leaving the practice of medicine to lay doctors. Some religious Orders have a privilege of allowing their members who have studied medicine to prescribe for the sick where there are not suitable lay doctors. In the supposition that the case was one of necessity Caius was justified in amputating the arm, and as he did not commit sin by doing this, neither did he incur irregularity.[2]

[1] St. Alphonsus, lib. vii, 384.
[2] Ibid., viii, n. 384.

# ECCLESIASTICAL BURIAL

## MIXED CEMETERIES

Caius rector ecclesiæ Catholicæ in quodam oppido Anglico quasdam difficultates de cœmeterio Titio confessario proposuit. Cœmeterium enim totius oppidi incolis commune, est in tres partes divisum, quarum una *Non-conformists*, altera Anglicanis, tertia rite ab Episcopo consecrata Catholicis est assignata. Jamvero aliquando accidit ut conjux Catholica cum conjuge acatholico in parte cœmeterii acatholica, vel ut acatholica in parte catholica cum conjuge catholico sepeliri desideret; sæpe etiam terra de tumulis catholicis superflua desumitur et ad cavum æquandum in parte cœmeterii non consecrata adhibetur, contra reverentiam rei sacræ debitam, ut Caio videtur. Utrum hæc igitur sint licita Caius confessarium rogabat. Unde quæritur:

1. Quid sit sepultura ecclesiastica, et quibusnam sit deneganda?

2. Quomodo differant simplex tumuli benedictio ac cœmeterii consecratio?

3. Quid ad casum?

### Solution

1. What is ecclesiastical burial and to whom must it be denied?

Ecclesiastical burial consists in being buried with the rites of the Church in consecrated ground. Catholic burial is to be denied to all who died out of communion with the faithful, and to those who on account of their crimes are forbidden it by the Church in the Ritual.[1]

2. What difference is there between simple blessing of the grave and the consecration of the cemetery?

The simple blessing of the grave is given by a priest when a Catholic is not buried in consecrated ground. It is *invocativa*, not *consecrativa*, and it does not make the grave a sacred place.[2]

The consecration of a cemetery is performed by a bishop, or by a priest specially delegated by a bishop, with the rite contained in the Pontifical or Ritual.

3. The case. When they ask it for good reason it would seem that Caius with the leave of the bishop may bury Catholics with their non-Catholic spouses in the unconsecrated portions of the cemetery,[3] although *per se* there is a grave precept that Catholics should be buried in consecrated ground. It would seem also that he may bless the grave for the Catholic party. Non-Catholics must not be buried in consecrated cemeteries set apart for Catholics exclusively by ecclesiastical and municipal law. A Catholic cemetery is polluted by the burial in it of an excommunicated person who was *vitandus*.

There is no reason why the refuse from the graves in the Catholic part of the cemetery should not be taken to level other parts. The cemetery is made a sacred place for the

[1] Manual of Moral Theology, vol. ii, 385.

[2] Many, De Locis Sacris, n. 143.

[3] Concil. Baltim., III, n. 317 seqq.; Génicot, vol. ii, n. 627.

burial of Catholics by its consecration; such consecration does not make the separate portions of earth and stones in the cemetery sacred objects. There is then no ground for the scruple of Caius.

# INDULGENCES

## 1

## THE APOSTOLIC BLESSING

Caius sacerdos missionarius vocabatur ad moribundum Tertiarium S. Francisci qui post recepta sacramenta petiit ut juxta privilegium Tertiariis concessum sibi daretur Benedictio apostolica cum indulgentia plenaria in articulo mortis. Quam quidem Caius concessit juxta formulam approbatam, ac ut securior esset moribundus, statim dedit ei apostolicam benedictionem juxta Rituale. Quibus auditis alius sacerdos eum increpabat dicendo plenariam indulgentiam in articulo mortis semel tantum lucrari posse, et præstare benedictionem dare apostolicam quando moribundus in eo est ut moriatur, ne postea peccando pœnas luendas incurrat. Unde quæritur:

1. Num pluries dari possit moribundo benedictio apostolica cum indulgentia plenaria in articulo mortis?

2. Num sit expectandus ipse articulus mortis verus ut detur ista benedictio?

3. Quid ad casum?

### Solution

1. Can the apostolic blessing with a plenary indulgence be given several times to a person in danger of death?

No, it can only be given once while the person is in the

same danger of death either by different priests or by the same priest on different titles.[1]

2. Is the moment of death to be waited for in order that the blessing may be given?

No, the apostolic blessing may be given as soon as the recipient is in danger of death and capable of receiving the sacrament of Extreme Unction. The blessing only takes its effect in the true moment of death, and in the meantime its effect is suspended.[2]

3. The case, Caius did right to accede to the pious wish of the dying tertiary, and give him the papal blessing to which he had a right. He did wrong to repeat it immediately after according to the form in the Ritual. The Sacred Congregation of Indulgences has several times answered that the blessing may be given only once. On the other hand the second priest was wrong in saying that the papal blessing should be given when the recipient is actually dying; it takes its effect at that time if it were validly given and received, but it may be given as soon as the recipient is in danger of death, as was said above.

[1] Ojetti, Synopsis Rer. Moral., *s.v.* Indulgentia.

[2] Génicot, vol. ii, n. 410.

## 2

## THE JUBILEE

Lucius Catholicus tum bonus tum ingeniosus vult lucrari Jubilæum recenter promulgatum. Inter opera præscripta visitationes ecclesiæ parochialis sexaginta solæ difficultatem facessunt, quas hoc modo perficere statuit. Advertit enim visitandam esse ecclesiam " per quindecim continuos vel interpolatos dies, sive naturales, sive etiam ecclesiasticos;" hinc mane priusquam ad negotia vadit duas visitationes ecclesiæ domicilii facit, meridie aliam ecclesiam parochialem prope locum ubi negotia agit bis visitat, domum reversus vespere die ecclesiastico incœpto quatuor alias visitationes perficit; proximo die dominico, addit sex visitationes duabus consuetis ad Missam et ad Vesperas audiendas, et ita porro. Ad satisfaciendum conditioni orandi ad mentem Summi Pontificis nullam determinatam formam adhibet, sed nunc offert Missam auditam, nunc Rosarium recitatum, nunc piam meditationem factam. Unde quæritur:

1. Quid sit Jubilæum, et quid ejusdem extensio?
2. Quæ conditiones et quomodo sint implendæ ad illud lucrandum?
3. Num partialiter illud quis lucrari valeat?
4. Quid ad casum?

### Solution

1. What is a Jubilee, and what is its extension?

A Jubilee is a plenary indulgence granted by the Pope with greater solemnity than usual for a definite time together with special faculties for confessors. A general Jubilee is usually granted in the first instance at Rome, and afterwards it is extended to the whole Church.[1]

2. What conditions for gaining it are prescribed, and how are they to be fulfilled?

The conditions for gaining an ordinary Jubilee are confession, communion, and prayer for the Pope's intention in churches to be visited for the purpose a certain number of times. As they are conditions on which the Jubilee is granted, they must be exactly fulfilled.

3. Can a Jubilee be gained partially?

Some were of opinion that either a full remission of temporal punishment is gained by a plenary indulgence, or nothing. According to the received opinion, a plenary indulgence may be gained only partially on account of the temporal punishment due to venial sins unrepented of not being remitted. A Jubilee may also be partially gained, in that one who intends to gain it may receive the benefit of the special faculties granted to confessors although afterwards he changes his mind and does not try to gain the indulgence.

4. The case. It appears from the case that the bishop had prescribed sixty visits to be paid to the parish church on fifteen days in order that the faithful might gain the Jubilee. If there was only one parish church in the place

[1] Manual of Moral Theology, vol. ii, 455.

where Lucius lived, he had to visit that church, and he did not fulfil the condition by visiting the church where his work was. He was at liberty to make the visits within the natural, or within the ecclesiastical day. It would seem that the visit to the parish church to hear Mass on Sunday may be reckoned among the rest, as it is not otherwise of obligation. Lucius satisfied the obligation of praying for the intentions of the Pope by saying the Rosary, but not by hearing Mass, nor by pious meditation, as these are not vocal prayers.

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